



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

**PLEASE NOTE:** Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

KATHLEEN K. WEST, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Deputy Editor		(515)281-8157
	Fax:	(515)281-5534

### CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 7.17, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

## Schedule for Rule Making 2009

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
<b>*Dec. 24 '08*</b>	Jan. 14 '09	Feb. 3 '09	Feb. 18 '09	Feb. 20 '09	Mar. 11 '09	Apr. 15 '09	July 13 '09
Jan. 9	Jan. 28	Feb. 17	Mar. 4	Mar. 6	Mar. 25	Apr. 29	July 27
Jan. 23	Feb. 11	Mar. 3	Mar. 18	Mar. 20	Apr. 8	May 13	Aug. 10
Feb. 6	Feb. 25	Mar. 17	Apr. 1	Apr. 3	Apr. 22	May 27	Aug. 24
Feb. 20	Mar. 11	Mar. 31	Apr. 15	Apr. 17	May 6	June 10	Sep. 7
Mar. 6	Mar. 25	Apr. 14	Apr. 29	May 1	May 20	June 24	Sep. 21
Mar. 20	Apr. 8	Apr. 28	May 13	<b>***May 13***</b>	June 3	July 8	Oct. 5
Apr. 3	Apr. 22	May 12	May 27	May 29	June 17	July 22	Oct. 19
Apr. 17	May 6	May 26	June 10	June 12	July 1	Aug. 5	Nov. 2
May 1	May 20	June 9	June 24	<b>***June 24***</b>	July 15	Aug. 19	Nov. 16
<b>***May 13***</b>	June 3	June 23	July 8	July 10	July 29	Sep. 2	Nov. 30
May 29	June 17	July 7	July 22	July 24	Aug. 12	Sep. 16	Dec. 14
June 12	July 1	July 21	Aug. 5	Aug. 7	Aug. 26	Sep. 30	Dec. 28
<b>***June 24***</b>	July 15	Aug. 4	Aug. 19	<b>***Aug. 19***</b>	Sep. 9	Oct. 14	Jan. 11 '10
July 10	July 29	Aug. 18	Sep. 2	Sep. 4	Sep. 23	Oct. 28	Jan. 25 '10
July 24	Aug. 12	Sep. 1	Sep. 16	Sep. 18	Oct. 7	Nov. 11	Feb. 8 '10
Aug. 7	Aug. 26	Sep. 15	Sep. 30	Oct. 2	Oct. 21	Nov. 25	Feb. 22 '10
<b>***Aug. 19***</b>	Sep. 9	Sep. 29	Oct. 14	Oct. 16	Nov. 4	Dec. 9	Mar. 8 '10
Sep. 4	Sep. 23	Oct. 13	Oct. 28	<b>***Oct. 28***</b>	Nov. 18	Dec. 23	Mar. 22 '10
Sep. 18	Oct. 7	Oct. 27	Nov. 11	<b>***Nov. 12***</b>	Dec. 2	Jan. 6 '10	Apr. 5 '10
Oct. 2	Oct. 21	Nov. 10	Nov. 25	<b>***Nov. 25***</b>	Dec. 16	Jan. 20 '10	Apr. 19 '10
Oct. 16	Nov. 4	Nov. 24	Dec. 9	<b>***Dec. 9***</b>	Dec. 30	Feb. 3 '10	May 3 '10
<b>***Oct. 28***</b>	Nov. 18	Dec. 8	Dec. 23	<b>***Dec. 23***</b>	Jan. 13 '10	Feb. 17 '10	May 17 '10
<b>***Nov. 12***</b>	Dec. 2	Dec. 22	Jan. 6 '10	Jan. 8 '10	Jan. 27 '10	Mar. 3 '10	May 31 '10
<b>***Nov. 25***</b>	Dec. 16	Jan. 5 '10	Jan. 20 '10	Jan. 22 '10	Feb. 10 '10	Mar. 17 '10	June 14 '10
<b>***Dec. 9***</b>	Dec. 30	Jan. 19 '10	Feb. 3 '10	Feb. 5 '10	Feb. 24 '10	Mar. 31 '10	June 28 '10
<b>***Dec. 23***</b>	Jan. 13 '10	Feb. 2 '10	Feb. 17 '10	Feb. 19 '10	Mar. 10 '10	Apr. 14 '10	July 12 '10

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
23	Friday, April 17, 2009	May 6, 2009
24	Friday, May 1, 2009	May 20, 2009
25	Wednesday, May 13, 2009	June 3, 2009

**PLEASE NOTE:**

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

**\*\*\*Note change of filing deadline\*\*\***

AGENCY	HEARING LOCATION	DATE AND TIME
<b>ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]</b>		
Neighborhood stabilization program, ch 27 IAB 4/8/09 <b>ARC 7710B</b> (See also <b>ARC 7709B</b> herein)	Iowa Room 200 E. Grand Ave. Des Moines, Iowa	April 28, 2009 1:30 to 2:30 p.m.
Brownfield redevelopment program, redevelopment tax credit, 65.1 to 65.10 IAB 4/8/09 <b>ARC 7706B</b>	200 E. Grand Ave. Des Moines, Iowa	April 28, 2009 2 to 4:30 p.m.
Disaster recovery business rental assistance program, ch 79 IAB 4/8/09 <b>ARC 7707B</b> (See also <b>ARC 7708B</b> herein)	Iowa Room 200 E. Grand Ave. Des Moines, Iowa	April 28, 2009 2:30 to 4:30 p.m.
<b>EMPOWERMENT BOARD, IOWA[349]</b>		
Community empowerment—updates to rules, ch 1 IAB 4/8/09 <b>ARC 7677B</b>	Room 142 Lucas State Office Bldg. Des Moines, Iowa	April 28, 2009 10 a.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b>		
Removal of EPA clean air mercury rule (CAMR) provisions, 23.1, 25.3, 34.300 to 34.308 IAB 3/11/09 <b>ARC 7622B</b>	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	April 13, 2009 1 p.m.
Air emissions reduction assistance program, ch 35 IAB 4/8/09 <b>ARC 7678B</b> (See also <b>ARC 7679B</b> herein)	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	May 11, 2009 10 a.m.
Surface water classification, 61.3(5) IAB 3/11/09 <b>ARC 7624B</b>	Cherokee Community Center 530 W. Bluff St. Cherokee, Iowa	April 9, 2009 10 a.m.
	Municipal Utilities Conference Room 15 West 3rd St. Atlantic, Iowa	April 9, 2009 6 p.m.
	Falcon Civic Center 1305 5th Avenue NE Independence, Iowa	April 14, 2009 10 a.m.
	Public Library 123 Linn St. Iowa City, Iowa	April 14, 2009 6 p.m.
	Community Meeting Room 15 North 6th St. Clear Lake, Iowa	April 16, 2009 1 p.m.
<b>INSURANCE DIVISION[191]</b>		
Licensing of insurance producers, 10.2, 10.8, 10.15, 10.16, 10.18(4) IAB 4/8/09 <b>ARC 7711B</b>	330 Maple St. Des Moines, Iowa	May 4, 2009 2 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
<b>IOWA FINANCE AUTHORITY[265]</b>		
Definition of “title plant” rescinded, 9.7(2) IAB 4/8/09 <b>ARC 7702B</b>	215 Grand Ave. Des Moines, Iowa	April 28, 2009 1 p.m.
<b>LABOR SERVICES DIVISION[875]</b>		
Elevators, escalators, and related equipment, adopt ch 71; amend chs 72, 73; rescind chs 75, 76 IAB 4/8/09 <b>ARC 7696B</b>	Capitol View Room Iowa Workforce Development 1000 E. Grand Ave. Des Moines, Iowa	April 29, 2009 1:30 p.m. (If requested)
Special inspector commissions, 71.12 IAB 4/8/09 <b>ARC 7697B</b>	Capitol View Room Iowa Workforce Development 1000 E. Grand Ave. Des Moines, Iowa	April 29, 2009 1:30 p.m.
<b>MANAGEMENT DEPARTMENT[541]</b>		
First years first grant program, ch 13 IAB 3/25/09 <b>ARC 7640B</b>	Room 142 Lucas State Office Bldg. Des Moines, Iowa	April 14, 2009 10:30 a.m.
<b>NATURAL RESOURCE COMMISSION[571]</b>		
Game management areas—use of stationary blinds and decoys, 51.6 IAB 4/8/09 <b>ARC 7693B</b> (ICN Network)	Contact (515)281-5034 or visit the department’s Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.
Expansion of wildlife refuge area listing, 52.1(2)“a” IAB 4/8/09 <b>ARC 7685B</b> (ICN Network)	Contact (515)281-5034 or visit the department’s Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.
Waterfowl and coot hunting seasons, 91.1, 91.3 to 91.6 IAB 4/8/09 <b>ARC 7686B</b> (ICN Network)	Contact (515)281-5034 or visit the department’s Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.
Landowner-tenant registration, 95.2 IAB 4/8/09 <b>ARC 7688B</b> (ICN Network)	Contact (515)281-5034 or visit the department’s Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.
Wild turkey fall hunting by residents, 99.2(3), 99.5(1) IAB 4/8/09 <b>ARC 7689B</b> (ICN Network)	Contact (515)281-5034 or visit the department’s Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.
Deer hunting—licenses, quotas and restrictions, depredation permits, 106.1(1)“a,” 106.6, 106.11(4)“b” IAB 4/8/09 <b>ARC 7690B</b> (ICN Network)	Contact (515)281-5034 or visit the department’s Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.
Hunting and trapping of certain furbearers, 108.1, 108.7(6) IAB 4/8/09 <b>ARC 7691B</b> (ICN Network)	Contact (515)281-5034 or visit the department’s Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
<b>NATURAL RESOURCE COMMISSION[571] (Cont'd)</b>		
Trapping—public roadside limitations, removal of animals from traps and snares, 110.1, 110.5 IAB 4/8/09 <b>ARC 7692B (ICN Network)</b>	Contact (515)281-5034 or visit the department's Web site at <a href="http://www.iowadnr.com">www.iowadnr.com</a> for list of 18 ICN hearing locations.	April 29, 2009 6 to 9 p.m.
<b>PHARMACY BOARD[657]</b>		
Iowa prescription monitoring program, ch 37 IAB 4/8/09 <b>ARC 7676B</b>	Board Conference Room, Suite E 400 SW 8th St. Des Moines, Iowa	April 30, 2009 1 p.m.
<b>PUBLIC HEALTH DEPARTMENT[641]</b>		
Compliance with Virginia Graeme Baker Pool and Spa Safety Act, amendments to ch 15 IAB 4/8/09 <b>ARC 7675B</b>	Room 513 Lukas State Office Bldg. Des Moines, Iowa	April 28, 2009 1 to 2 p.m.
WIC food package approval criteria, 73.9(3) IAB 4/8/09 <b>ARC 7669B (ICN Network)</b>	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	April 28, 2009 9 to 10 a.m.
	Room N147, Lagomarcino Hall Iowa State University - 1 Corner of Knoll Rd. and Pamel Dr. Ames, Iowa	April 28, 2009 9 to 10 a.m.
	ICN Room, Mississippi Bend AEA - 9 729 21st St. Bettendorf, Iowa	April 28, 2009 9 to 10 a.m.
	Second Floor Meeting Room Public Library 524 Parkade Cedar Falls, Iowa	April 28, 2009 9 to 10 a.m.
	ICN Room, Careers Building Iowa School for the Deaf - 1 3501 Harry Langdon Blvd. Council Bluffs, Iowa	April 28, 2009 9 to 10 a.m.
	Room 2, Keystone AEA - 1 2310 Chaney Rd. Dubuque, Iowa	April 28, 2009 9 to 10 a.m.
	Room 100 Ft. Dodge Air National Guard 1649 Nelson Ave. Ft. Dodge, Iowa	April 28, 2009 9 to 10 a.m.
	Room 121 Iowa Valley Community College 123 6th Avenue West Grinnell, Iowa	April 28, 2009 9 to 10 a.m.
	Public Library Meeting Room 150 West Willman St. Hiawatha, Iowa	April 28, 2009 9 to 10 a.m.

AGENCY	HEARING LOCATION	DATE AND TIME
<b>PUBLIC HEALTH DEPARTMENT[641]</b> (Cont'd)		
<b>(ICN Network)</b>	Room 106 North Iowa Area Community College - 1 500 College Dr. Mason City, Iowa	April 28, 2009 9 to 10 a.m.
	Mount Pleasant Treatment Center 1200 East Washington Mount Pleasant, Iowa	April 28, 2009 9 to 10 a.m.
	Public Library ICN Room 300 South Filmore St. Osceola, Iowa	April 28, 2009 9 to 10 a.m.
	Great Prairie AEA - 1 2814 North Court St. Ottumwa, Iowa	April 28, 2009 9 to 10 a.m.
	Room 206, Northwest AEA - 12 1520 Morningside Ave. Sioux City, Iowa	April 28, 2009 9 to 10 a.m.
	ICN Room Iowa Lakes Community College 800 21st St. Spirit Lake, Iowa	April 28, 2009 9 to 10 a.m.
<b>PUBLIC SAFETY DEPARTMENT[661]</b>		
Sustainable design standards, ch 310 IAB 3/25/09 <b>ARC 7657B</b>	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 East 7th St. Des Moines, Iowa	April 14, 2009 10:15 a.m.
<b>REAL ESTATE COMMISSION[193E]</b>		
Residential property seller disclosure statement, 14.1(6) IAB 3/25/09 <b>ARC 7639B</b>	Professional Licensure Conf. Rm., 2nd Floor 1920 SE Hulsizer Rd. Ankeny, Iowa	April 14, 2009 9 a.m.
Continuing education—distance learning, 16.4(4) IAB 3/25/09 <b>ARC 7638B</b>	Professional Licensure Conf. Rm., 2nd Floor 1920 SE Hulsizer Rd. Ankeny, Iowa	April 14, 2009 9 a.m.
<b>UTILITIES DIVISION[199]</b>		
Emergency outage reporting requirements for certificated local exchange carriers, 22.2(9) IAB 4/8/09 <b>ARC 7674B</b>	Board Hearing Room 350 Maple St. Des Moines, Iowa	May 11, 2009 10 a.m.
<b>VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]</b>		
Department duties; county commission account and training program; Iowa veterans cemetery, 1.1 to 1.3, 1.5, 1.11 IAB 3/25/09 <b>ARC 7659B</b>	Building A6A, Camp Dodge 7105 NW 70th Ave. Johnston, Iowa	April 17, 2009 1 to 2 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
<b>VETERANS AFFAIRS, IOWA DEPARTMENT OF[801] (Cont'd)</b>		
County commission of veterans affairs fund and training program, ch 7 IAB 3/25/09 <b>ARC 7660B</b>	Building A6A, Camp Dodge 7105 NW 70th Ave. Johnston, Iowa	April 17, 2009 2 to 4:30 p.m.
Veterans trust fund, 14.2, 14.3(1), 14.4, 14.5, 14.7 IAB 3/25/09 <b>ARC 7661B</b>	Building A6A, Camp Dodge 7105 NW 70th Ave. Johnston, Iowa	April 17, 2009 12:30 to 1 p.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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**ARC 7710B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 15.105 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt new Chapter 27, "Neighborhood Stabilization Program," Iowa Administrative Code.

These proposed rules are intended to implement the newly authorized Neighborhood Stabilization Program through the U.S. Department of Housing and Urban Development. The Neighborhood Stabilization Program funds were authorized by the Housing and Economic Recovery Act of 2008 as an adjunct to the Community Development Block Grant Program.

The rules describe eligibility requirements, establish application review and approval procedures, and describe fund allocation.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on April 28, 2009. Interested persons may submit written or oral comments by contacting Tim Waddell, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4780.

The Department will hold a public hearing on April 28, 2009, from 1:30 to 2:30 p.m. to receive comments on these rules. The public hearing will be held in the Iowa Room, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 7709B**. The content of that submission is incorporated by reference.

These rules are intended to implement Iowa Code sections 15.108(11) and 15.109 and the Housing and Economic Recovery Act of 2008.

**ARC 7706B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 15.104, 15.106 and 15.295, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 65, "Brownfield Redevelopment Program," Iowa Administrative Code.

The proposed amendments implement recent legislative changes as authorized in 2008 Iowa Acts, chapter 1173. The amendments update Iowa Code citations; add new definitions for "council," "grayfield site," "green development," "qualifying investment," "qualifying investor," "qualifying redevelopment project," and "sustainable design"; amend the definition of "brownfield site"; and describe the eligibility requirements and application procedures for the new redevelopment tax credits.

The Department will hold a public hearing to accept public comments on April 28, 2009, from 2 to 4:30 p.m. at the Iowa Department of Economic Development, 200 E. Grand Avenue, Des Moines,

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

Iowa 50309. Written public comments will also be accepted until 4:30 p.m. on April 28, 2009. Interested persons may submit written comments to Matt Rasmussen, Iowa Department of Economic Development, 200 E. Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4906; or E-mail [matt.rasmussen@iowalifechanging.com](mailto:matt.rasmussen@iowalifechanging.com).

These amendments are intended to implement Iowa Code sections 15.291 to 15.295.

The following amendments are proposed.

ITEM 1. Strike “78GA,ch1101” wherever it appears in **261—Chapter 65** and insert “15” in lieu thereof.

ITEM 2. Amend rule **261—65.2(15)**, introductory paragraph, as follows:

**261—65.2(15) Definitions.** ~~When As used in this chapter these rules,~~ unless the context otherwise requires, the definitions in Iowa Code section 15.292 shall apply to this chapter. The following definitions shall also apply:

ITEM 3. Amend rule **261—65.2(15)**, definition of “Brownfield site,” as follows:

“*Brownfield site*” means an abandoned, idled, or underutilized industrial or commercial facility where expansion or redevelopment is complicated by real or perceived environmental contamination. A brownfield site includes property contiguous with the property on which the individual or commercial facility is located. A brownfield site shall not include property which has been placed, or is proposed ~~to be included~~ for placement, on the national priorities list established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 et seq.

ITEM 4. Adopt the following **new** definitions in rule **261—65.2(15)**:

“*Board*” means the Iowa economic development board pursuant to Iowa Code section 15.103.

“*Council*” means the brownfield redevelopment advisory council, as established in Iowa Code section 15.294.

“*Grayfield site*” means an industrial or commercial property meeting all of the following requirements:

1. Infrastructure on the property is outdated or prevents an efficient use of the property, including vacant, blighted, obsolete, or otherwise underutilized property.

2. Property improvements and infrastructure are at least 25 years old and one or more of the following conditions exist:

- Thirty percent or more of a building located on the property is available for occupancy and has been vacated or unoccupied for at least 12 months;
- Assessed value of improvements on the property has decreased by 25 percent or more;
- The property is used as a parking lot;
- Improvements on the property no longer exist.

“*Green development*” means development which meets or exceeds the sustainable design standards as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

“*Qualifying investment*” means the purchase price, cleanup cost(s), and redevelopment cost(s) directly related to a qualifying redevelopment project.

“*Qualifying investor*” means an applicant who has been accepted by the department to receive a redevelopment tax credit.

“*Qualifying redevelopment project*” means a brownfield or grayfield site being redeveloped or improved by the property owner. “Qualifying redevelopment project” does not include a previously remediated or redeveloped brownfield site.

“*Sustainable design*” means construction design intended to minimize negative environmental impacts and to promote the health and comfort of building occupants including, but not limited to, measures to reduce consumption of nonrenewable resources, minimize waste, and create healthy, productive environments. Sustainable design standards are also known as green building standards pursuant to Iowa Code section 103A.8B.

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

ITEM 5. Amend rule 261—65.3(15) as follows:

**261—65.3(15) Eligible applicants.** To be eligible to apply for program assistance, an applicant must meet the following eligibility requirements:

**65.3(1) Site owner.** A person owning a site is an eligible applicant if the site for which assistance is sought meets the definition of a brownfield or grayfield site and the applicant has secured a sponsor prior to applying for program assistance.

**65.3(2) Nonowner of site.** A person who is not an owner of a site is an eligible applicant if the site meets the definition of a brownfield or grayfield site and the applicant has secured a sponsor prior to applying for program assistance.

**65.3(3)** No change.

ITEM 6. Amend subrule 65.4(1) as follows:

**65.4(1) Financial assistance.** Eligible forms of financial assistance under this program include grants, interest-bearing loans, forgivable loans, loan guarantees, tax credits, and other forms of assistance under the brownfield redevelopment program established in ~~2000 Iowa Acts, chapter 1101~~ Iowa Code section 15.292.

ITEM 7. Amend rule 261—65.7(15) as follows:

**261—65.7(15) Application contents.**

**65.7(1)** ~~At~~ Every application for assistance shall include, but not be limited to, ~~the following information:~~ evidence of sponsorship. In addition, applications for assistance other than tax credits shall include the following information:

a. ~~1-~~ A business plan, ~~which includes a remediation plan~~. The business plan should, at a minimum, include a remediation plan, a project contact/applying agency, a project overview (which would include the background of the project area, goals and objectives of the project, and implementation strategy), and a project/remediation budget.

b. ~~2-~~ A statement of purpose describing the intended use of and proposed repayment schedule for any financial assistance received by the applicant.

~~3- Evidence of sponsorship.~~

**65.7(2)** The department shall accept applications and determine application eligibility. The council shall make application recommendations to the board. The board shall approve or deny applications.

**65.7(3)** Approved applicants shall enter into an agreement with the department. The agreement shall specify the maximum amount of tax credit available.

**65.7(4)** The department shall issue a tax credit certificate upon written notification of project completion.

ITEM 8. Adopt the following new rule 261—65.11(15):

**261—65.11(15) Redevelopment tax credit.**

**65.11(1) Purpose.** The purpose of the redevelopment tax credit program is to make tax credits available for a redevelopment project investment. The department may cooperate with the department of natural resources and local governments in an effort to disseminate information regarding the redevelopment tax credit.

**65.11(2) Eligible applicant.** An individual, partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual may claim a redevelopment tax credit. Once an applicant is deemed eligible, the applicant shall be considered a qualifying investor for a redevelopment tax credit. A city or county may not apply for a redevelopment tax credit.

**65.11(3) Tax credit certificate.**

a. *Issuance.* The department shall issue a redevelopment tax credit certificate upon completion of the project and submittal of proof of completion by the qualified investor. The tax credit certificate shall contain the qualified investor's name, address, tax identification number, the amount of the credit, the name of the qualifying investor, any other information required by the department of revenue, and a

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

*b. Acceptance.* The tax credit certificate, unless rescinded by the board, shall be accepted by the Iowa department of revenue as payment for taxes imposed pursuant to Iowa Code chapter 422, divisions II, III, and V, and to Iowa Code chapter 432, and for the moneys and credits tax imposed in Iowa Code section 533.329, subject to any conditions or restrictions placed by the board upon the face of the tax credit certificate and subject to the limitations of this rule, for a portion of a taxpayer's equity investment in a qualifying redevelopment project.

*c. Transfer.* Tax credit certificates issued under this rule may be transferred to any person or entity. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the Iowa department of revenue, including a statement with the transferee's name, tax identification number, address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the Iowa department of revenue.

*d. Replacement certificate.* Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the Iowa department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared in the transferred tax credit certificate.

*e. Claiming a transferred tax credit.* A tax credit shall not be claimed by a transferee until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration paid or received for the transfer of the tax credit shall not be included or deducted as income under Iowa Code chapter 422, divisions II, III, and V, under Iowa Code chapter 432, or against the moneys and credits tax imposed in Iowa Code section 533.329.

**65.11(4) Amount of tax credit.**

*a. Pro rata share.* The qualified investor may claim the amount based upon the pro rata share of the qualified investor's earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the qualified investor's liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the qualified investor receives the tax credit.

*b. Percentage.* The amount of the tax credit shall equal one of the following:

- (1) Twelve percent of the taxpayer's qualifying investment in a grayfield site.
- (2) Fifteen percent of the taxpayer's qualifying investment in a grayfield site if the qualifying redevelopment project meets the requirements of green development as defined in 261—65.2(15).
- (3) Twenty-four percent of the taxpayer's qualifying investment in a brownfield site.
- (4) Thirty percent of the taxpayer's qualifying investment in a brownfield site if the qualifying redevelopment project meets the requirements of green development as defined in 261—65.2(15).

*c. Maximum credit per project.* The maximum amount of a tax credit for a qualifying investment in any one qualifying redevelopment project shall not exceed 10 percent of the maximum amount of tax credits available in any one fiscal year pursuant to paragraph 65.11(4)“d.”

*d. Maximum credit total.* For the fiscal year beginning July 1, 2009, the maximum amount of tax credits issued by the department shall not exceed \$1 million. The department shall not issue tax credits pursuant to this rule in subsequent fiscal years unless authorized pursuant to this subrule.

**65.11(5) Claiming a tax credit.** The qualified investor must attach one or more tax credit certificate(s) to the qualified investor's tax return. A tax credit certificate shall not be used or attached to a return filed for a taxable year beginning prior to July 1, 2009. The tax credit certificate or certificates attached to the qualified investor's tax return shall be issued in the qualified investor's name, expire on or after the last day of the taxable year for which the qualified investor is claiming the tax credit, and show a tax credit amount equal to or greater than the tax credit claimed on the qualified investor's tax return.

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

**65.11(6) Reduction of tax credit.**

*a.* Taxes imposed under Iowa Code section 422.11V, less the credits allowed under Iowa Code sections 422.12, 422.33, 422.60, 432.12L, and moneys and credits imposed under Iowa Code section 533.329 shall be reduced by a redevelopment tax credit allowed under Iowa Code sections 15.291 to 15.294.

*b.* For purposes of individual and corporate income taxes and the franchise tax, the increase in the basis of the redeveloped property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the credit computed under this rule.

**65.11(7) Project completion.**

*a.* An investment shall be deemed to have been made on the date the qualifying redevelopment project is completed. An investment made prior to January 1, 2009, or after June 30, 2010, shall not qualify for a tax credit under this rule.

*b.* A qualifying redevelopment project not completed within 30 months after board approval shall not be eligible for a tax credit pursuant to this rule. The board has the discretion to allow an additional 12-month extension period to complete a project.

*c.* Failure to comply. If a taxpayer receives a tax credit pursuant to Iowa Code section 15.293A but fails to comply with any of the requirements, the taxpayer loses any right to the tax credit. The Iowa department of revenue shall seek recovery of the value of the credit the qualified investor received.

**65.11(8) Tax credit carryover.** If the maximum amount of tax credits available has not been issued at the end of the fiscal year, the remaining tax credit amount may be carried over to a subsequent fiscal year or the department may prorate the remaining credit amount among other eligible applicants.

**65.11(9) Department registration and authorization.** The department shall develop a system for registration and authorization of tax credits. The department shall control distribution of all tax credits distributed to investors, including developing and maintaining a list of tax credit applicants from year to year to ensure that if the maximum aggregate amount of tax credits is reached in one year, an applicant can be given priority consideration for a tax credit in an ensuing year.

**65.11(10) Other financial assistance considerations.** If a qualified investor has also applied to the department, the board, or any other agency of state government for additional financial assistance, the department, the board, or the agency of state government shall not consider the receipt of a tax credit issued pursuant to this rule when considering the application for additional financial assistance.

ITEM 9. Adopt the following **new** rule 261—65.12(15):

**261—65.12(15) Council approval and repayment requirements of redevelopment tax credit.**

**65.12(1)** A qualified investor seeking to claim a tax credit pursuant to Iowa Code sections 15.293A and 15.293B shall apply to the council, as established in Iowa Code section 15.294. The council shall recommend to the board the tax credit amount available for each qualifying redevelopment project.

**65.12(2)** A qualified investor shall provide the council with the following:

*a.* Information showing the total costs of the qualifying redevelopment project, including the costs of land acquisition, cleanup, and redevelopment.

*b.* Information about the financing sources of the investment which is directly related to the qualifying redevelopment project for which the taxpayer is seeking approval for a tax credit, as provided in Iowa Code section 15.293A.

ITEM 10. Amend **261—Chapter 65**, implementation sentence, as follows:

These rules are intended to implement ~~2000 Iowa Acts, chapter 1101~~ Iowa Code sections 15.291 to 15.295.

**ARC 7707B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development proposes to adopt new Chapter 79, "Disaster Recovery Business Rental Assistance Program," Iowa Administrative Code.

These rules are intended to assist a business located in or planning to locate in a business rental space that was physically damaged by the 2008 natural disaster(s). This financial assistance will offset building rental lease payments for a maximum of six months, not to exceed a total award amount of \$50,000. In-home businesses are not eligible for funds pursuant to this chapter.

The rules describe the purpose of the program, provide program definitions, establish eligibility requirements and the maximum amount of financial assistance available, and provide for program administration.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on April 28, 2009. Interested persons may submit written or oral comments by contacting Laura Stein, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4922.

The Department will hold a public hearing on April 28, 2009, from 2:30 to 4:30 p.m. to receive comments on these rules. The public hearing will be held in the Iowa Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 7708B**. The content of that submission is incorporated by reference.

These rules are intended to implement Iowa Code section 15.109.

**ARC 7677B****EMPOWERMENT BOARD, IOWA[349]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 28.4, the Iowa Empowerment Board hereby gives Notice of Intended Action to amend Chapter 1, "Community Empowerment," Iowa Administrative Code.

The proposed amendments to Chapter 1 add definitions and incorporate language placed into the Iowa Code during the 2006, 2007 and 2008 legislative sessions and update the rules overall. The amendments add definitions for "fiscal assessment," "home visitation," and "preschool programming support services"; rescind definitions for "community empowerment gifts and grants account" and "core functions"; amend definitions for "early childhood business committee," "first years first," "parent education," "state agency" and "state empowerment team"; update Iowa Empowerment Board membership; clarify language regarding the responsibility of community empowerment boards and the

EMPOWERMENT BOARD, IOWA[349](cont'd)

carryforward-of-funds process; and add references to the criteria for use of first years first funds (See **ARC 7640B**, IAB 3/25/09, for proposed 541—Chapter 13).

Any interested person may make written suggestions or comments on the proposed amendments on or before April 28, 2009. Such written materials should be sent to the Facilitator, Office of Empowerment, Iowa Department of Management, State Capitol Building, Des Moines, Iowa 50319; by facsimile to (515)281-4225; or by electronic mail to [shanell.wagler@iowa.gov](mailto:shanell.wagler@iowa.gov).

A public hearing will be held on April 28, 2009, at 10 a.m. in Room 142 at the Lucas State Office Building, Des Moines, Iowa, at which time comments may be submitted orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Shanell Wagler at (515)281-4321 to advise of specific needs.

These amendments are intended to implement Iowa Code chapter 28.

The following amendments are proposed.

ITEM 1. Rescind the definitions of “Community empowerment gifts and grants account” and “Core functions” in rule **349—1.4(28)**.

ITEM 2. Amend rule **349—1.4(28)**, definitions of “Early childhood business committee,” “First years first,” “Parent education,” “State agency” and “State empowerment team,” as follows:

“*Early childhood business committee*” means a committee created by the Iowa board to advise the Iowa board on the use of the ~~community empowerment gifts and grants~~ first years first account funds and to support implementation of the business community investment advisory council ~~recommendations~~.

“*First years first*” means a public-private partnership for early childhood in Iowa- which includes an account created in the Iowa empowerment fund under the authority of the department of management to be used for first years first.

“*Parent education*” means ~~any developmentally appropriate information provided to or facilitated with individuals who function in the role of parents or expectant parents.~~ programs that implement organized and planned meetings designed to support parents’ efforts to enhance their children’s health and development. Parent education may be provided in a group setting or one-on-one in a family’s home or alternate location. It is generally limited in scope and duration, typically lasting for 8 to 12 weeks. Parent education programs have the following characteristics:

- Provide parents with information, skills, support systems and confidence in their parental role in order to support, nurture and promote children’s health and development;
- Strengthen positive relationships between parents and children;
- Build on parents’ strengths and utilize their experiences, ideas and knowledge; and
- Provide information that meets the needs of parents for specific content and that is shared in a manner that is responsive to a parent’s learning style, education and culture.

“*State agency*” means a department of the executive branch including, but not limited to, the departments of economic development, education, human rights, human services, public health, human services and human rights and workforce development.

“*State empowerment team*” means the central office of empowerment in the department of management and identified personnel from the state agencies departments of economic development, education, human rights, human services, public health, human services, and human rights and workforce development to provide the day-to-day operational work of local- and state-level community empowerment and support to the Iowa board.

ITEM 3. Adopt the following **new** definitions in rule **349—1.4(28)**:

“*Fiscal assessment*” means a comprehensive listing of funding to support children prenatal through five years of age.

“*Home visitation*” means a strategy to deliver family support or parent education services. A home visit is a face-to-face visit with a family in the family’s home or other alternate location to facilitate meeting the family’s goals.

“*Preschool programming support services*” means assistance with preschool tuition not covered by another source for families who have children aged three, four, or five and who meet the eligibility

## EMPOWERMENT BOARD, IOWA[349](cont'd)

requirements; support for transporting children to and from preschool services; or services that directly enhance or expand existing programming for children.

ITEM 4. Amend paragraph **1.5(3)“i”** as follows:

*i.* Work with the state and local components of the community empowerment initiative, ~~shared visions programs funded under Iowa Code chapter 256A,~~ and other public and private efforts to improve the early care system.

ITEM 5. Amend subrule 1.6(1) as follows:

**1.6(1) Membership.** The Iowa board shall consist of ~~18~~ 22 voting members: ~~13~~ 16 citizen members and ~~5~~ 6 state agency director members. ~~Six~~ Four legislators shall serve as nonvoting members.

*a.* ~~Five~~ Six members shall be the directors, not the designees, of the state ~~agencies~~ departments of economic development, education, human rights, human services, ~~and public health, and workforce development.~~

*b.* The ~~13~~ 16 citizen members shall be appointed by the governor, subject to confirmation by the senate.

(1) Appointments of citizen members shall ensure that each of the state’s congressional districts is represented by at least two citizen members.

(2) to (4) No change.

*c.* No change.

ITEM 6. Amend subparagraphs **1.6(3)“d”(5)** and **(6)** as follows:

~~(5) –Core functions for family support, parent support and preschool services provided through the community plan.~~

~~(6) (5)~~ Integration of statewide quality standards and results indicators adopted by other boards and commissions into the Iowa empowerment board’s funding requirements for investments in early care, education, health, and human services.

ITEM 7. Amend paragraph **1.6(3)“m,”** introductory paragraph, as follows:

*m.* The Iowa board shall establish a process for designation to occur every three ~~fiscal~~ years.

ITEM 8. Amend subparagraph **1.6(3)“o”(1)** as follows:

(1) Information provided on the Internet Web page shall include but not be limited to all of the following:

1. The Iowa early learning standards for children aged birth to three and three to five, ~~proposed by the early learning standards group created pursuant to federal child care and development block grant requirements and with assistance from the Iowa child care and early education network, department of education, department of human services, Iowa head start association, and Iowa state university of science and technology, as prepared with consideration of the standards and recommendations issued by the United States Department of Education regarding early childhood cognitive development and learning and preschool and research based standards for high quality early care, including but not limited to the practices identified by the Institute of Education Sciences of the United States Department of Education. As early learning standards are identified in law, the proposed standards posted on the Web page shall be replaced with the standards identified in law.~~

2. to 4. No change.

ITEM 9. Amend subrule 1.8(2) as follows:

**1.8(2) Responsibility.**

*a.* A community board shall:

(1) Obtain extensive community input to develop a mission and a vision for the empowerment area.

(2) Designate a fiscal agent from a public agency, a community action agency, an area education agency or a nonprofit corporation.

(3) Administer, at a minimum, the community empowerment funds from the state awarded for the empowerment area.

(4) Administer funds as provided by law or from other federal, state, local, grant, foundation, or private moneys or other funds.

## EMPOWERMENT BOARD, IOWA[349](cont'd)

(5) Ensure that interest or earnings on the community empowerment funds will be used for services in the community plan.

(6) Coordinate with the decategorization governing boards on the community plan and budget for the empowerment geographic area.

(7) Develop and implement a community plan, which addresses sustainability, with identified priorities, current needs, gaps and services, based on community assessments which address early care, human service, education and health needs to support children prenatal through five years of age and their families ~~to reach~~ in reaching desired results. At a minimum, the community plan shall include:

1. A description of current and desired levels of community coordination of services for children prenatal through five years of age, including the involvement and specific responsibilities of all related organizations and entities.

2. A fiscal assessment that identifies federal, state, local and private funding sources and funding amounts available in the empowerment area for use in providing services to children prenatal through five years of age.

3. A description of how funding sources will be used collaboratively and the degree to which the moneys can be combined to provide necessary services to children.

4. Priorities the community board expects to achieve through the implementation of the community plan and the program performance measures to be reported in the annual report.

5. A description of the support services provided in the empowerment area to child care facilities registered or licensed under Iowa Code chapter 237A to prevent the spread of infectious diseases, prevent child injuries, develop health emergency protocols, help with medication, and care for children with special health needs.

6. A process for evaluating progress.

(8) Ensure that an annual report for the empowerment area on the effectiveness of the community plan is submitted each fiscal year on or before September 15 to the Iowa board and to local governing bodies in the empowerment area. The annual report shall:

~~1. Complete a budget~~ Provide information that identifies existing sources of funding, including in kind and match, and how these funds may be coordinated with the early childhood and school ready funds to support the community plan.

2. Identify members of the community board, including each member's representation.

3. Identify local empowerment area indicators to assess the effectiveness of the community plan. Include baseline data, three years of trend data, data source(s), the linkage to desired results, and data analysis to support the identified indicators.

4. ~~Provide measures, data, facts and statistics, including analysis, on progress of the~~ a description of community collaboration and the community plan within the empowerment area.

5. ~~Include baseline data and the ensuing fiscal year's data for local indicators, identify priorities, link local indicators to desired results, and report performance measures.~~ Provide updates or changes to the community plan.

6. Provide performance measures for programs and activities funded, including state-required measures, through the early childhood and school ready grant funds.

7. Include financial statements for both early childhood and school ready grant funds.

(9) ~~Provide for staff to~~ staffing for the empowerment area and community board through the collaborative efforts of public and private organizations committed to reaching desired results for children and their families.

~~(10) Develop a plan to sustain community efforts to support children and their families within the empowerment area.~~

~~(11) Function as a coordinating body for collaboration and alignment of services, which are offered by different entities and directed toward similar purposes, within the empowerment area.~~

~~(12)~~ (10) Assume other responsibilities established by law or administrative rule.

b. A community board may:

## EMPOWERMENT BOARD, IOWA[349](cont'd)

(1) Designate one or more committees for oversight of empowerment funds awarded to the empowerment area. Committees make recommendations to the community board and have no decision-making authority.

(2) Develop, within the empowerment area, neighborhood bodies for community-level input to the community board and implementation of the community plan. Representatives who serve on these bodies advocate, make recommendations, provide expertise, suggest public policy, and provide guidance to the community board.

~~(3) Implement the Iowa board's process to award funds at the beginning of the fiscal year to service providers.~~

~~(4) Establish an advisory council with representatives from the empowerment area to advocate, make recommendations, provide expertise, suggest public policy, and provide guidance to the community board. The community board may appoint an advisory council including members who are professionals knowledgeable in the fields of health, human services, early care, and education.~~

~~(5) (3) Apply to the Iowa board or state agencies for waivers in order to administer categorical funds for services provided in the empowerment area which support the desired results for children and their families.~~

~~(6) (4) By mutual written agreement between the community board, the decategorization board, and the state department of human services, assume the duties of the decategorization board, or the decategorization board may serve as a committee of the community board.~~

(5) Function as a coordinating body for collaboration and alignment of services offered by different entities and directed toward similar purposes within the empowerment area.

ITEM 10. Amend rule 349—1.9(28) as follows:

**349—1.9(28) Iowa empowerment fund.** An Iowa empowerment fund is created in the state treasury as specified in Iowa Code section 28.9. A school ready funding account is created in the Iowa empowerment fund under the authority of the Iowa board to be administered by the director of the department of education. Moneys credited to the account shall be distributed by the department of education to designated empowerment areas pursuant to criteria established by the Iowa board in accordance with law. An early childhood funding account is created in the Iowa empowerment fund and shall be distributed by the director of the department of human services to designated empowerment areas pursuant to criteria established by the Iowa board in accordance with law. ~~A community empowerment gifts and grants first years first~~ account is created in the Iowa empowerment fund under the authority of the department of management. The account shall consist of gift or grant moneys obtained from any source, including but not limited to the federal government. Moneys credited to the account are appropriated to the department of management to be used for first years first. Interest or earnings on moneys deposited in the Iowa empowerment fund shall be credited to the fund.

ITEM 11. Amend rule 349—1.10(28) as follows:

**349—1.10(28) Iowa empowerment funds.**

**1.10(1) Purpose.** The purpose of Iowa empowerment funds is to:

- a. Encourage early intellectual stimulation of very young children;
- b. Increase the basic skill levels of students entering school;
- c. Increase the health status of children;
- d. Reduce the incidence of child abuse and neglect;
- e. Increase ~~parents'~~ a family's involvement with ~~their~~ the family's children; and
- f. Increase the quality and accessibility of child care and preschool.

**1.10(2) Criteria for the use of early childhood funds.** Use of early childhood funds is defined in department of human services 441—Chapter 169, Iowa Administrative Code.

**1.10(3) Criteria for school ready funds.** School ready funds may be provided according to the community plan following community assessment of assets, resources and needs and identification of priorities.

## EMPOWERMENT BOARD, IOWA[349](cont'd)

- a. Services, ~~at a minimum~~ in a community plan, may include, but are not limited to:
- (1) Child development services.
  - (2) Child care services.
  - (3) Child care provider training on a child's early learning experience.
  - (4) Children's health and safety.
  - ~~(5) Assessment services to identify chemically exposed infants and children.~~
  - ~~(6) (5) Parent Family support services and parent education.~~
  - ~~(7) (6) Preschool programming support services for children at risk.~~
- b. Up to 3 percent, ~~not to exceed \$60,000~~, of annual school ready funds may be used by the community board for administrative costs and other implementation expenses.
- c. Empowerment areas ~~are encouraged to~~ shall commit approximately 60 percent of the remainder of school ready funds to family home visitation and parent support to family support services and parent education programs targeted to families with children who are prenatal through five years of age based upon a local community needs assessment.
- d. The Iowa board will incorporate statewide quality standards and results indicators adopted by other boards and commissions into the Iowa board's funding requirements for investments in early care, education, health, and human service.
- e. Eligibility to receive school ready funds shall be limited to designated empowerment areas.
- f. School ready funds may be adjusted for other federal and state grant moneys received by the empowerment area.
- g. Distribution of school ready funds shall be in accordance with directives in the current legislative appropriation of these funds.

1.10(4) Criteria for first years first funds. Use of first years first funds is defined in department of management 541—Chapter 13, Iowa Administrative Code.

~~1.10(4)~~ 1.10(5) Method for carryforward of funds. ~~The Iowa board shall identify and apply limitations on the carryforward amount of school ready children grant funding the Iowa empowerment board may carry forward annually shall not exceed 20 percent. Carryforward of funds cannot exceed three years. School ready children grant funds received by a community empowerment board in a fiscal year shall be carried forward to the following fiscal year. However, any funds that remain unencumbered and unobligated at the end of the fiscal year in excess of 20 percent of the funds received in a fiscal year shall be subtracted by the Iowa empowerment board from the allocation to the community empowerment board for the following fiscal year.~~

~~The Iowa board defined an unusually high percentage as 30 percent of the annual school ready allocation, based on an accrual reporting system. For fiscal years ending after July 1, 2006, empowerment areas reporting a carryover balance of school ready funds in excess of 30 percent of the previous year's allocation will receive a reduction equal to the excess amount above the 30 percent in their next year's school ready allocation, based on accrual reporting.~~

~~All local community empowerment areas receive an automatic waiver for fiscal year '06 because of the significant increased allocation and stipulations to the school ready fund for fiscal year '06. Beginning in fiscal year '07, local CEAs shall file an appeal to the Iowa board to carry forward more than 30 percent of their annual school ready allocation. The appeal would provide an opportunity for local CEAs to explain their special circumstances, the particular use designated for the carryforward funds, how this action is in alignment with their community plan, and how this plan benefits Iowa's children and families.~~

~~Any excess carryforward funds will be distributed to all local boards, through the formula, for locally identified activities that are within the guidelines for use of school ready funds.~~

**ARC 7678B**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 455B.103(5), the Environmental Protection Commission hereby gives Notice of Intended Action to adopt Chapter 35, "Air Emissions Reduction Assistance Program," Iowa Administrative Code.

The purpose of this chapter is to establish a financial assistance program to distribute funds appropriated to Iowa through the federal American Recovery and Reinvestment Act of 2009 (Act). The funds will be distributed to eligible applicants through grants or a combination of grants and loans. The program addresses emissions from diesel vehicles and equipment currently used for on-road applications, such as buses and heavy-duty diesel trucks, and non-road applications, such as construction, agriculture, or mining. Eligible projects include engine idling reduction and retrofit technologies, engine replacement, vehicle replacement, and use of clean diesel emerging technologies.

There is an expedited time line for distribution of federal funds to eligible applicants. The Commission is proceeding with these rules in an expedited manner to meet the time line requirements of Section 701 of the federal Act. According to the provision of Section 701, U.S. EPA must report the details of the programs to Congress by mid-May 2009. Disbursement of funds is anticipated to be required shortly after approval of the programs. Guidelines for the financial assistance program and application forms will be posted on the DNR's Web site.

Any person may make written suggestions or comments on the proposed rules on or before May 12, 2009. Written comments should be directed to Wendy Rains, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515)224-5094; or by electronic mail to [wendy.rains@dnr.iowa.gov](mailto:wendy.rains@dnr.iowa.gov).

A public hearing will be held on May 11, 2009, at 10 a.m. in the conference rooms at the Department's Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa. At the public hearing, comments on the proposed rules may be submitted orally or in writing. All comments must be received no later than May 12, 2009.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Wendy Rains at (515)281-6061 to advise of any specific needs.

These rules were also Adopted and Filed Without Notice and are published herein as **ARC 7679B**. The content of that submission is incorporated by reference.

These rules are intended to implement Iowa Code section 455B.103(5).

**ARC 7705B****ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

Iowa Code chapter 68A provides that media organizations that discuss candidates and public affairs do not trigger the campaign laws. Iowa Code section 68A.503(2)"d" directs the Iowa Ethics and Campaign Disclosure Board to adopt a rule prohibiting the owner, publisher, or editor of a sham newspaper from using the newspaper to promote that person's candidacy for public office. The proposed amendment establishes the factors the Board will use in determining whether a publication should be entitled to the press exception or should be treated as a sham newspaper that triggers the campaign laws.

The proposed amendment does not contain a specific waiver provision. However, because the proposed amendment sets out factors to be used in making a decision, input from the affected party would be part of that decision. In addition, the Board has adopted general waiver provisions in 351—Chapter 15.

Any interested person may make written comments on the proposed amendment on or before April 28, 2009. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 68A.503(2)"d."

The following amendment is proposed.

Adopt the following **new** rule 351—4.48(68A):

**351—4.48(68A) Sham newspapers not entitled to press exception.** Iowa Code chapter 68A provides that when a media organization discusses candidates and public affairs, the media organization does not trigger the campaign laws. Iowa Code section 68A.503(2)"d" directs the board to adopt a rule prohibiting the owner, publisher, or editor of a sham newspaper from using the sham newspaper to promote in any way the candidacy of the person for public office. In determining whether or not a publication is entitled to the press exception or is a sham newspaper that triggers the campaign laws, the board will consider the following factors:

1. Whether the publication is published and made available on a regular schedule or interval;
2. The proximity to the election in which the candidates and public affairs are discussed;
3. Whether the publication contains news items and articles of opinion of a general character separate from discussions concerning candidates and public affairs;
4. How widely the publication is circulated or is otherwise made available to the public in comparison to a targeted audience for potential campaign purposes;
5. Whether the publication discusses all candidates for a particular election or otherwise gives all candidates equal space; and
6. Whether the publication expressly advocates for the candidacy of the owner, publisher, or editor of the publication or for the defeat of a campaign opponent of the owner, publisher, or editor of the publication.

This rule is intended to implement Iowa Code section 68A.503(2)"d."

**ARC 7712B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 237.3 and 234.6, the Department of Human Services proposes to amend Chapter 112, "Licensing and Regulation of Child Foster Care Facilities," Chapter 113, "Licensing and Regulation of Foster Family Homes," Chapter 117, "Foster Parent Training," Chapter 156, "Payments for Foster Care and Foster Parent Training," Chapter 200, "Adoption Services," and Chapter 202, "Foster Care Services," Iowa Administrative Code.

The proposed amendments update provisions for foster family home licensing and training and for foster care and adoption services to:

- Reflect the Department's current contracting arrangements and procedures.
- Incorporate changes to comply with federal law and regulations and support the Department's position for federal Child and Family Service Reviews.
- Incorporate changes suggested by Department staff and stakeholders.
- Insert numbering to comply with current standards for administrative rules.

The amendments to Chapter 112 would:

- Clarify application provisions for foster care licenses for both foster family and group care.
- Extend the time limit for a decision on an initial foster family home license application from 90 days to 140 days if the applicant must complete the 30-hour preservice training course or to 120 days if the course is waived. The Department's experience is that current requirements for training and for national criminal record checks often cannot be completed within 90 days of the application date.
- Provide that the Department shall not act on a family's reapplication for licensing if the family's license has been denied or revoked within the last 12 months.
- Add refusal of the foster family to engage as a resource to the foster child's birth parents as grounds for denial of a renewal application.
- Clarify that mandatory child abuse reporter training must be approved by the Iowa Department of Public Health.
- Clarify that a foster family's training documentation shall be submitted to the Department's statewide contractor for the recruitment and retention of resource (foster and adoptive) families.
- Update organizational terminology.

The amendments to Chapter 113 would:

- Rescind definitions of unused terms and add new definitions.
- Add an overview of the steps in the licensing process, including a list of forms and documentation that the applicant family must submit.
- Allow waiver of any licensing standard that can be waived without a negative impact on the safety or well-being of the foster child. Public Law 110-351, the Fostering Connections to Success and Increasing Adoptions Act, requires this waiver provision. (The Department will not have the authority to waive standards set in state or federal law.)
- Add more physical requirements for bedrooms used by foster children and for family sleeping arrangements.
- Prohibit smoking in the foster family home or vehicle when foster children are present, based on a recommendation from the Department's Child Death Review Team.
- Require foster parent applicants to make a visual inspection for lead-paint hazards and apply interim controls to mitigate any potential hazard identified. This provision is required by 2008 Iowa Acts, chapter 1187, section 35.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- Add a minimum temperature requirement for bedrooms and prohibit use of kerosene heaters or gas-fired space heaters in the foster family home.
- Waive the water-testing requirement after a family has made alternative arrangements for safe water for three consecutive years.
- Require each floor where foster children would sleep to have a working smoke detector and carbon monoxide detector as well as a window exit that meets specified dimensions.
- Add safety requirements related to combustion hazards, safety plans, medications and poisonous substances, weapons and firearms, transporting and supervising foster children, and pets or outdoor animals with which a foster child may come into contact.
- Move foster parent training standards to Chapter 117, except for a summary list of requirements.
- Require the foster family to actively ensure that the foster child stays connected to the child's kin, culture, and community as required in the child's case permanency plan.
- Require that records about the foster child be provided to the supervising agency or to the child's parent or guardian when the child leaves the placement.
- Allow the licensing worker discretion to request an updated health report from the foster family.
- Set a minimum age requirement of 21 and make minor changes to the requirements for the personal characteristics of the foster parents.
- Clarify the scope of assessment and the timing for the required unannounced visit, which is now made by the recruitment and retention contractor. Deficiencies found will be referred to the Department's licensing worker for joint planning with the foster family on improvement.
- Clarify the requirements on working with the foster child's school and consulting with the child's parents about participation in the child's culture and religion.
- Clarify the requirements on training and discipline of foster children and provide that if the child's treatment plan includes the use of restraints, the foster parents shall receive training in the safe and appropriate use of restraints.
- Add requirements for alternative care during a foster parent's emergency absence and reporting absences and other changes of circumstances that could affect the health, safety or welfare of a foster child in the family's care.

The amendments to Chapter 117 would:

- Incorporate the training requirements previously included in Chapter 113.
- Require approval of the area social work administrator or designee for a preservice training session to an individual family instead of a group.
- Clarify that the Department's recruitment and retention contractor is responsible for providing orientation and managing preservice training.
- Clarify requirements for approval and crediting of in-service training, including designating a training cycle that is offset from the licensing period, so that license renewal will not be delayed when the foster parent needs to complete the annual training requirement.
- Require training in medication management, CPR, first aid, and child abuse reporting during the first year of licensing. The Child Death Review Team has recommended that training in first aid and CPR be mandatory.
- Require completion of the course "Caring for Children With HIV" before placement of an HIV-infected child with the family.
- Incorporate the rules on training stipends and trainer fees that were previously in Chapter 156.

The amendments to Chapter 156 would:

- Change the chapter title to reflect the removal of foster parent training provisions.
- Remove unused definitions and update definitions to remove obsolete references and terminology.
- Provide for recovery of overpayments made to a foster family.
- Require a foster family that provides child care to be registered pursuant to 441—Chapter 110 and prohibit the family from displacing the foster child to another child care facility.
- Clarify provisions for payment in a preadoptive placement.
- Update language on the contracts required for provider payment.

The amendments to Chapter 200 would:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- Amend and add definitions and update form references.
- Clarify the role of the recruitment and retention contractor in doing adoptive home studies, preparing families for adoption, and providing support to adoptive families.
- Clarify the role of the Department adoption worker in preplacement and postplacement services.
- Rescind rules on the methods of service provision, fees for services, and international adoptions. Since the Department will accept applications for adoption only for special needs children, fees do not apply. International adoptions are handled through private child-placing agencies.

The amendments to Chapter 202 would:

- Update the definition of “foster care” to match the definition in Chapter 156.
- Add new definitions of “family safety, risk, and permanency service,” “foster family adoption,” “resource family,” and “social history.”
- Require a genogram of the child’s family as part of the assessment of the need for foster care placement.
- Add requirements on record checks for relatives who may accept placement of the child.
- Prohibit placement of a child who has asthma or other respiratory disease in a foster family home where any member of the household smokes.
- Add requirements for furnishing information to the foster care provider which were previously included in Chapter 113.
- Require monthly visits by the caseworker to the child’s parents.
- Clarify the provision of services to children in foster family placement.

Other than the licensing waivers mentioned above, these amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before April 28, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code chapters 234, 237, and 600.

The following amendments are proposed.

ITEM 1. Amend rule 441—112.1(237) as follows:

**441—112.1(237) Applicability.** This chapter relates to licensing procedures for all child foster care facilities authorized by Iowa Code chapter 237. Rules relating to specific types of facilities are located in 441—Chapter 113, “Licensing and Regulation of Foster Family Care Homes,” 441—Chapter 114, “Licensing and Regulation of All Group Living Foster Care Facilities for Children,” 441—Chapter 115, “Licensing and Regulation of Comprehensive Residential Facilities for Children,” and 441—Chapter 116, “Licensing and Regulation of Residential Facilities for Mentally Retarded Children.”

This rule is intended to implement Iowa Code chapter 237.

ITEM 2. Amend rule 441—112.3(237) as follows:

**441—112.3(237) Application for license.**

**112.3(1) Right to apply.** Any adult individual or agency has the right to ~~make application~~ apply for a license.

*a. Foster family care.* A person wishing to apply to be a foster parent shall contact the department’s recruitment and retention contractor at 1-800-243-0756 to request an application packet. This procedure also applies to:

(1) Persons wishing to care for children placed through a any public or private agency shall make application through that agency.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~b. (2) Persons wishing to care for children~~ A relative who is caring for a child directly placed by the child's parents, guardians, or ~~other relatives shall make application to the department of human services~~ another relative and who wishes to be licensed as a foster parent.

b. Group care. A person wishing to apply for a group care license shall contact the department:

(1) Through the "Child Welfare" link on the department's Web site, www.dhs.iowa.gov; or

(2) By mail to the DHS Division of Child and Family Services, Attn: Group Care Licensing, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

**112.3(2) Decision to operate a facility.**

a. When an applicant has reached a decision to operate a facility for child foster care family home, the applicant shall complete Form 470-0689, Foster Family Home License Application. ~~or~~

b. When an applicant has reached a decision to operate a group facility, the applicant shall complete Form 470-0723, Application for License or Certificate of Approval. Requests for renewal shall be made on the same form.

**112.3(3) to 112.3(5) No change.**

**112.3(6) Applications for renewal.**

a. The department or its agent shall send the licensee an application for renewal 90 days before the license expires. Applications for license renewal shall be made on the form specified in subrule 112.3(2).

b. Applications for renewal shall be made to the department at least 30 but no more than 90 days before the license expires. Applications for renewal of a group care license shall be submitted to the address in subparagraph 112.3(1)"b"(2). Applications for renewal of a foster family home license shall be submitted to the recruitment and retention contractor.

c. The department shall approve or deny an application for license renewal through the same process as that used for the original application.

**112.3(7) Notification.**

a. Foster family homes.

(1) The department shall notify an applicant of the approval or denial of an initial license within 140 days of the date that the applicant begins the preservice training required in 441—subrule 113.8(1). When preservice training is waived, the department shall notify the applicant of approval or denial within 120 days of the date that the training waiver is granted.

(2) The department shall notify a licensee of the approval or denial of license renewal within 90 days of reapplication.

b. Group facilities. Facilities shall be notified The department shall notify a group facility of approval or denial of a license within 90 days of application or reapplication.

This rule is intended to implement Iowa Code section 237.5.

ITEM 3. Amend subrule 112.5(2) as follows:

**112.5(2) Reapplications will shall be denied:**

a. For the same reasons as original applications.

b. For the same reasons as listed in the grounds for revocation.

c. When the foster family applicant's license has been denied or revoked within the 12 months before the date of reapplication. Denial for this reason does not require a licensing study.

d. If the foster family refuses to engage as a resource to a foster child's birth parents when engagement can be done in a way that does not put the foster family or the foster child at risk of harm.

ITEM 4. Strike "commissioner" wherever it appears in subrules **112.9(2)** and **112.9(3)** and insert "director" in lieu thereof.

ITEM 5. Amend subrule **112.10(1)**, catchwords, as follows:

**112.10(1) Mandatory ~~reports~~ reporters.**

ITEM 6. Amend paragraph **112.10(3)"b"** as follows:

b. If the foster care provider is a licensed foster parent, the foster parent shall be responsible for obtaining the required two-hour training in child abuse identification and reporting as part of a continuing education program required under Iowa Code section 232.69 and chapter 258A 272C, or from any of

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~the following: and approved by the department of human services public health, the department of education, an area education agency, a school district, the Iowa law enforcement academy, or a similar public agency.~~

ITEM 7. Amend paragraph **112.10(5)“b”** as follows:

*b.* If the foster care provider is a licensed foster parent, the foster parent shall be responsible for securing documentation of the training content, amount, and provider, and shall forward the documentation to the department's ~~district office~~ recruitment and retention contractor, which will provide a copy to the department licensing worker for the service area where the family resides, for inclusion in the licensing file.

ITEM 8. Rescind the definition of “Relative” in rule **441—113.2(237)**.

ITEM 9. Adopt the following **new** definitions in rule **441—113.2(237)**:

“*Corporal punishment*” means the intentional physical punishment of a foster child.

“*Department*” means the Iowa department of human services.

“*Reasonable force*” means that force, and no more, which a reasonable person in like circumstances would judge to be necessary to prevent an injury or loss.

“*Recruitment and retention contractor*” means the entity that contracts with the department statewide to recruit foster and adoptive parents, complete home studies, and perform activities to support and encourage retention of foster and adoptive parents, or any of its subcontractors.

“*Service area manager*” means the department employee responsible for managing department offices within a department service area.

“*Social work administrator*” means the department employee responsible for supervising the social work staff within a department service area and for implementing service policies and procedures of the department.

ITEM 10. Rescind rule 441—113.3(237) and adopt the following **new** rule in lieu thereof:

**441—113.3(237) Licensing procedure.**

**113.3(1) Application.** Applications for an initial license to operate a foster family home shall be submitted and processed as directed in rule 441—112.3(237). In addition to the application form, the applicant shall submit the following:

*a.* Form 595-1396, DHS Criminal History Record Check, for each person living in the home who is 14 years of age or older, as required by rule 441—113.13(237).

*b.* Form 470-0720, Physician’s Report for Foster and Adoptive Parents, to satisfy the requirements of rule 441—113.11(237).

*c.* Form 470-3226, HIV General Agreement, to indicate choices about caring for children who have or are at risk for HIV infection.

*d.* Form 470-0693, Foster Care Private Water Supply Survey, if applicable.

*e.* A drawing of the floor plan of the family’s home.

*f.* If married, a copy of the marriage certificate.

*g.* If divorced, a copy of the divorce decree.

*h.* If licensed to drive, a copy of the driver’s license and motor vehicle insurance.

**113.3(2) Orientation.** Applicants shall attend an orientation provided by the recruitment and retention contractor as described in rule 441—117.2(237).

**113.3(3) Record checks.** Before beginning preservice training, applicants shall pass at least the local record check procedures as specified in rule 441—113.13(237).

**113.3(4) Home study.** The worker for the recruitment and retention contractor shall complete a family home study.

*a. Process.* Information for the home study is gathered primarily through the required preservice training as described in rule 441—117.1(237). In addition:

(1) The worker shall hold at least two face-to-face interviews with the applicant.

(2) The worker shall hold at least one face-to-face interview with each member of the household.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) At least one of the interviews shall take place at the applicant's home. A physical inspection of the home is required to verify compliance with the standards in this chapter.

(4) Reference checks shall be conducted as described at rule 441—113.14(237).

*b. Family assessment topics.* The assessment of the prospective foster family shall evaluate the family's ability to parent a special needs child. The assessment shall include the following:

(1) The applicant's motivation for foster care and whether the family has biological, adopted, or foster children.

(2) The attitude of the family and the extended family toward accepting a foster child.

(3) The applicant's emotional stability; marital relationship and history, including verification of marriages and divorces; family relationships; and compatibility.

(4) The applicant's ability to cope with problems, stress, frustrations, crisis, separation, and loss.

(5) Medical, mental, and emotional conditions that may affect the applicant's ability to parent a child; treatment history; current status of treatment; and the evaluation of the treatment.

(6) The applicant's willingness to accept a child who has medical problems (such as HIV), mental retardation, or emotional or behavioral problems.

(7) The applicant's ability to provide for a child's physical, medical, and emotional needs and respect the child's ethnic and religious identity.

(8) The safety of foster children in relation to any animals that live on the applicant's property.

(9) The adjustment of any children in the home, including their attitudes toward foster care and adoption, relationships with others, and school performance.

(10) An assessment of the applicant's disciplinary techniques and practices.

(11) The applicant's financial information and ability to provide for a child.

(12) The applicant's attitude toward the foster child's birth parents and siblings.

(13) The applicant's commitment to and capacity to maintain a foster child's significant relationships and work with the child's parents when the permanency goal is reunification.

(14) Any history of substance use or substance abuse by family members or members of the household, including treatment history and current status of treatment.

(15) Any history of abuse by family members or members of the household, including treatment history, current status of treatment, and how this issue would affect the applicant's ability to be a foster parent.

(16) Any criminal convictions of family members or adults in the household and the evaluation of the criminal record.

*c. Written report.* The recruitment and retention contractor shall prepare a written report of the family assessment using Form 470-4029, PS-MAPP Family Profile Summary, and RC-0025, Home Study Summary and Recommendation Outline. The summary shall include a recommendation for the number, age, sex, characteristics, and special needs of a child or children the family can best parent, and any other pertinent information in making the licensing recommendation. The home study shall be maintained in the foster family record.

**113.3(5) Decision.** The department worker shall use the home study to approve or deny a prospective family as an appropriate placement for a child or children. The department worker shall notify the family of the licensing decision using Form 470-0709, Notice of Action: Foster Family Home.

*a.* Upon approval, the department shall issue the applicant a license as described at rule 441—112.4(237) to care for the number of foster children allowed under subrule 113.4(1).

*b.* If the department worker does not approve the home study, the notice shall state the reasons for that decision, as listed in rule 441—112.5(237). A license denial may be appealed as described at rule 441—112.8(237).

This rule is intended to implement Iowa Code section 237.5.

ITEM 11. Amend rule 441—113.4(237), introductory paragraph, as follows:

**441—113.4(237) Provisions pertaining to the license.** On a case-by-case basis, the service area manager or area social work administrator may waive any standard in this chapter unless:

1. The requirement is set in state or federal law; or

## HUMAN SERVICES DEPARTMENT[441](cont'd)

2. The waiver could have a negative impact on the safety and well-being of a child placed in the foster family home.

ITEM 12. Amend rule 441—113.5(237) as follows:

**441—113.5(237) Physical standards.**

**113.5(1)** No change.

**113.5(2) Grounds.**

a. No change.

b. The foster child shall be protected against ~~such hazards as~~ including, but not limited to, traffic, pools, railroads, waste material, and contaminated water.

**113.5(3) ~~Sleeping rooms~~ Bedrooms for foster children.**

a. ~~Sleeping rooms~~ Bedrooms shall either have been constructed for the purpose of providing sleeping accommodation or remodeled for sleeping to provide proper heat and ventilation. Bedroom additions to a home shall meet building code requirements. All bedrooms must have:

(1) Permanent walls;

(2) A door that closes;

(3) A working window that opens from the inside; and

(4) A closet, wardrobe, armoire, or dresser.

b. For multiple occupancy, the minimum area per child shall be 40 square feet adequate space to meet the needs of the child as determined by the worker completing Form 470-0695, Foster Home Survey Report.

c. No change.

**113.5(4) All rooms aboveground.**

a. No change.

b. The ceiling height for rooms aboveground shall be ~~seven feet or more~~ adequate for the child.

**113.5(5) Rooms belowground.**

a. No change.

b. ~~Sleeping rooms~~ Bedrooms for foster children located belowground shall:

(1) Have access to at least one direct exit to the outside on that level and one inside stairway exit on that level; and

(2) ~~conform~~ Conform to standards listed in 113.5(3) and 113.7(1)“a.”.

**113.5(6) Physical care standards for foster children.**

a. Grouping children in ~~sleeping rooms~~ bedrooms shall take into consideration the age and sex of children.

(1) Children over ~~six~~ 6 years of age shall not share a ~~room~~ bedroom with a child of the opposite sex.

(2) Foster children over the age of 2 shall not share a bedroom with any person over the age of 18 in the home unless approved by the social work administrator or designee.

(3) Foster children shall not share a bed with any other child.

b. Foster parents shall have a designated bedroom. Children ~~two~~ 2 years of age or older shall be provided bedroom space other than in the foster parents' bedroom. Foster children under the age of 2 may share a bedroom with the foster parent.

c. to h. No change.

i. Children under the age of 1 year shall be placed on their backs when sleeping unless otherwise authorized in writing by a physician.

j. Smoking shall be prohibited in the foster home or any vehicle when the foster child is present.

**113.5(7) ~~Household pets~~ Lead-based paint.** ~~Household pets which have access to the outdoors shall be inoculated for rabies.~~ If the applicant lives in a home built before 1960, the applicant shall submit Form 470-4703, Lead Paint Assessment, certifying that the applicant:

a. Has conducted a visual assessment for lead hazards that exist in the form of peeling or chipping paint; and

## HUMAN SERVICES DEPARTMENT[441](cont'd)

b. Has applied interim controls using safe work methods if the presence of peeling or chipping paint is found, unless an inspector certified pursuant to department of public health rules at 641—Chapter 70 has determined that the paint is not lead-based. “Interim controls” are measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, such as repairing deteriorated lead-based paint, specialized cleaning, maintenance, painting, and temporary containment.

**113.5(8)** No change.

**113.5(9)** *Toilet facilities.*

a. No change.

b. All toilet facilities, ~~including privies,~~ shall be maintained in a clean and working condition.

**113.5(10)** *Heating plant.*

a. The heating plant shall have a capacity to maintain a temperature of approximately 65 degrees Fahrenheit:

(1) ~~at~~ At a point 24 inches from the floor during the day in severe weather; and

(2) In the bedroom with the door closed.

b. ~~Gas-fired space heaters, other stoves, fireplaces~~ Fireplaces and water heaters shall be vented to the outside atmosphere. Kerosene heaters and gas-fired space heaters shall not be used to heat any space in the home.

**113.5(11)** No change.

This rule is intended to implement Iowa Code section 237.3.

ITEM 13. Amend paragraph **113.6(4)“e”** as follows:

e. When the water sample is not approved, no license shall be issued until the foster parents provide a written statement that foster children will be provided potable water, where it will be obtained, and how it will be transported and stored.

(1) The statement shall be provided on Form 470-0699, Provisions for Alternate Water Supply.

(2) Annual testing of the water may be waived after three consecutive years when the family has made ongoing alternative arrangements for the use of safe, potable water.

ITEM 14. Amend rule 441—113.7(237) as follows:

**441—113.7(237) Fire safety Safety.**

**113.7(1)** *Fire protection for bedrooms.* Any floor of a house, including the basement, used for the sleeping of foster children shall be equipped with ~~at least one of~~ the following:

a. A working smoke detector approved by the Underwriters Laboratory.

b. A window exit ~~providing the window exit that~~ meets all of the following criteria:

(1) The window opens from the inside and is large enough to allow the foster child to pass easily through it. The window shall have an opening height of at least 24 inches, a width of at least 20 inches, and a finished sill height of not more than 44 inches above the floor.

(2) Provisions are made to ensure that the foster child can easily reach, open, and climb through the window.

(3) Provisions are made to ensure that the foster child can safely reach the ground from the window. ~~This may include the need for secure steps or stairs.~~

(4) The foster child is aware of the window exit and how to ~~utilize~~ use it.

c. ~~A path of exit to the outside from the sleeping room which does not require the passage through more than one additional room, excluding hallways, stairs, and entryways~~ Hallways that allow unrestricted access to an exit.

d. A working carbon monoxide detector.

**113.7(2)** ~~Combustible materials~~ *Combustion hazards.*

a. Combustible materials shall be kept away from furnaces, stoves, ~~or~~ space heaters, and water heaters.

b. Explosives and flammable substances shall be stored securely and be inaccessible to a child.

c. The home shall have at least one operable 2A-10BC-rated or ABC-rated fire extinguisher.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**113.7(3) *Safety plan.*** The family shall have a safety plan to be used in case of fire, tornado, ~~or~~ blizzard, flood, other natural or manmade disasters, accidents, medical issues, and other life-threatening situations for children in out-of-home placements.

a. Safety plans for fire and tornadoes shall be documented and reviewed with foster children at the time of placement and practiced with the foster children throughout the year.

b. In the case of a disaster requiring evacuation of the home, the foster parents shall notify the department of the address and telephone number of the parents' temporary residence within 48 hours.

**113.7(4) *Medications and poisonous substances.*** All prescription medications and poisonous substances shall be kept in a locked storage container out of the reach of children.

a. All prescription medication shall be administered as prescribed and documented in a prescription medication log.

b. All over-the-counter medications shall be administered according to label directions or as directed by a physician.

**113.7(5) *Weapons.*** All weapons, firearms, and ammunition shall be inaccessible to a child of any age.

a. Weapons and firearms shall be maintained in a locked place, such as a gun case.

b. Ammunition shall be maintained in a locked place separate from the firearms.

c. Any motor vehicles used to transport foster children shall not contain a loaded gun, and any ammunition in the vehicle shall be kept in a separate, locked container.

d. Foster parents who have a permit to carry a firearm shall sign Form 470-4657, Firearms Safety Plan.

**113.7(6) *Transporting foster children.***

a. Foster parents shall have a valid Iowa driver's license and adequate motor vehicle insurance when they transport foster children in a motor vehicle.

b. Foster parents shall ensure that appropriate child safety restraints as required by Iowa law are used for all foster children when the foster parents transport the children in a motor vehicle.

c. Any motor vehicles used to transport foster children shall be smoke-free when foster children are being transported.

**113.7(7) *Supervision.*** The foster parents shall provide reasonable supervision of foster children to ensure their safety.

a. Foster parents shall monitor foster children while the children are using hazardous items. All dangerous objects or equipment, including but not limited to trampolines, recreational vehicles, and power tools, shall be inaccessible to a child unless:

(1) There is reasonable supervision by the foster parent, and

(2) Permission has been obtained from the parent or guardian for the foster child to use the equipment or vehicle.

b. Foster parents shall monitor foster children while the children are using the Internet.

**113.7(8) *Household pets.*** Household pets and any outdoor animals or pets accessible to foster children shall have a current veterinary health certificate that verifies the animal's routine immunizations as required by local ordinances.

This rule is intended to implement Iowa Code section 237.3.

ITEM 15. Rescind rule 441—113.8(237) and adopt the following **new** rule in lieu thereof:

**441—113.8(237) Foster parent training.**

**113.8(1) *Preservice training.*** All foster parent applicants shall complete the following training before licensure and the placement of a child in foster care in their home:

a. Orientation pursuant to rule 441—117.2(237); and

b. Preservice training pursuant to rule 441—117.1(237).

**113.8(2) *In-service training.*** All licensed foster parents shall complete six hours of in-service training annually as required by rule 441—117.7(237).

a. All foster parents shall complete training in medication management, cardiopulmonary resuscitation, and first aid in their first year of licensure as required by rule 441—117.8(237).

## HUMAN SERVICES DEPARTMENT[441](cont'd)

b. All licensed foster parents shall complete training on child abuse in their first year of licensure and every five years thereafter as required by rule 441—112.10(232) and 441—subrule 117.8(4).

This rule is intended to implement Iowa Code section 237.5A.

ITEM 16. Amend rule 441—113.9(237) as follows:

**441—113.9(237) Policy for involvement ~~Involvement of biological or adoptive parents~~ kin.**

**113.9(1) ~~Acceptance~~ Support by foster parents.** Foster parents shall ~~accept~~ support the involvement of biological or adoptive parents and other relatives of the foster child unless this involvement is evaluated and documented by the department or supervising agency to be detrimental to the child's well-being.

**113.9(2)** No change.

**113.9(3) Cultural connections.** Throughout the provision of care, the foster family shall actively ensure that the foster child stays connected to the child's kin, culture, and community as required in the child's case permanency plan.

This rule is intended to implement Iowa Code section 237.3.

ITEM 17. Rescind and reserve subrule **113.10(1)**.

ITEM 18. Amend subrule 113.10(2) as follows:

**113.10(2) ~~Additional Foster child information.~~ The following Foster parents shall maintain a separate folder of information ~~shall be maintained~~ on each foster ~~children~~ child placed in the foster family home. This folder shall be provided to the supervising agency or the child's parent or guardian when the child leaves the placement. The folder shall contain:**

a. Names and addresses of all doctors, mental health professionals, and dentists who have treated the child and the type of treatment received while in the foster home.

b. School reports including report cards and pictures.

c. ~~Date of discharge~~ the child left the placement.

d. Name, ~~and address,~~ and telephone number of the person to whom the child is discharged.

ITEM 19. Rescind subrule 113.10(3) and adopt the following **new** subrule in lieu thereof:

**113.10(3) Confidentiality.** Foster parents shall maintain confidentiality regarding a child in placement except as required to comply with rules on mandatory reporting of child abuse and with the child's case permanency plan. Foster parents shall not post pictures or information concerning a foster child on any Internet Web site.

ITEM 20. Amend rule 441—113.11(237) as follows:

**441—113.11(237) Health of foster family.**

**113.11(1) ~~Prior to initial licensure~~ Health report required.** The foster parents shall furnish the licensing agency with a health report on the family completed no more than six months ~~prior to~~ before the application for licensure. The report shall include information on all family members. An updated report shall be provided upon request of the department licensing worker or the recruitment and retention contractor.

**113.11(2) Contents of report.** This report shall include a statement from the health practitioner that there are no physical or mental health problems which would be a hazard to foster children placed in the home, and a statement that the foster parents' health would not prevent needed care from being ~~furnished~~ provided to the foster child.

**113.11(3) Capability for caring for the child.** If there is evidence that the foster parent is unable to provide necessary care for the child, the department licensing worker, the recruitment and retention contractor, or the physician may require additional medical and mental health reports.

This rule is intended to implement Iowa Code section 237.7.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 21. Amend rule 441—113.12(237) as follows:

**441—113.12(237) Characteristics of foster parents.**

**113.12(1) Age.**

- a. Foster parents shall be at least ~~18~~ 21 years of age.
- b. No change.

**113.12(2) to 113.12(4) No change.**

**113.12(5) Personal characteristics.** The foster parents shall:

- a. to c. No change.
- d. Be able to accept and deal with acting out behavior with realistic expectations and good judgment.
- e. ~~Treat~~ Include foster children in a ~~manner similar to natural or adoptive children in the home as far as participation in normal family life is concerned.~~
- f. No change.
- g. Be able to ~~separate from~~ support the case permanency plan for the foster child and not hamper return be willing to the natural home cooperate with visits, transportation, or other activities that support the child's connection to and reunification with the child's family.
- h. No change.

**113.12(6) Determination of characteristics.** The areas discussed in 113.12(4) and 113.12(5) shall be explored through observation of the family and interviews with family members and documented in a foster home study, using the PS-MAPP family profile format as described in subrule 113.3(4). ~~The home study shall be maintained in the foster family record.~~ Any additional areas that the family or worker identifies as a possibility for creating problems shall also be documented in the foster family record.

This rule is intended to implement Iowa Code section 237.3.

ITEM 22. Amend subrule 113.14(1) as follows:

**113.14(1)** At least three additional unsolicited references shall be checked for all foster family home applicants in addition to ~~the~~ a minimum of three references provided by the applicant.

ITEM 23. Amend rule 441—113.15(237) as follows:

**441—113.15(237) Unannounced visits.**

**113.15(1)** The department's recruitment and retention contractor shall make unannounced visit shall occur visits during periods of the day when the child and foster parents would normally be at home and awake, unless there has been a specific complaint about the family and care of the child.

**113.15(2)** The unannounced visit ~~may~~ shall include, but is not limited to, assessment of the following areas:

- a. ~~Cleanliness of the home~~ Home environment.
- b. ~~Cleanliness and appropriateness of the child's clothing~~ Who was present at the time of the visit.
- c. Interaction between the foster child and foster family and their children.
- d. and e. No change.
- f. Any previously or currently cited deficiencies, corrective action plans and progress.
- g. Any previous or current concerns from department workers.
- h. Discussion of placements during the licensing year and, if none, the reason why.
- i. Progress on completing training in the foster parents' training plan.
- j. Awareness of the foster parents' license capacity and compliance.
- k. Recommended action.

**113.15(3)** ~~Impressions of the unannounced visit shall be shared with foster parents.~~ An unannounced visit to the foster home:

- a. Shall be completed annually;
- b. Shall not be waived; and
- c. Shall not occur in conjunction with license renewal.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**113.15(4)** ~~A written report summarizing the visit~~ The findings from the unannounced visit shall be summarized on Form 470-4512, Unannounced Visit Report.

*a.* The report shall be sent to the department licensing worker and the foster parents within two weeks after the visit.

*b.* A copy of the report shall be retained in the foster parents' record.

**113.15(5)** Actions after the unannounced visit.

*a.* When deficiencies are cited that do not appear likely to cause immediate physical or mental harm to the child, an additional visit may be scheduled. The department licensing worker and the recruitment and retention contractor shall discuss the deficiencies with the foster parents and make suggestions for improving the deficiencies.

*b.* When the reported deficiencies raise questions of concern as to the quality of care provided, the licensing worker recruitment and retention contractor shall:

(1) report Report to the department licensing worker and to the placement worker, for each foster child currently placed in the home;

(2) suggesting Hold a meeting with the department licensing worker and the foster parents to discuss deficiencies and suggestions for improving the deficiencies, and following the discussion obtaining complete a written commitments from the foster parents corrective action plan as to how the foster parents intend to correct address the deficiencies.

*c.* When the reported deficiencies appear likely to cause immediate physical or mental harm to the child, the service area manager immediately shall or designee shall immediately:

(1) and (2) No change.

**113.15(6)** When the foster parents refuse to make a written commitment to improve the deficiencies, the department licensing worker shall do conduct a complete review of the foster home to determine if the license should be revoked according to rule 441—112.6(237).

This rule is intended to implement Iowa Code section 237.7.

ITEM 24. Amend subrules 113.16(3), 113.16(4) and 113.16(6) as follows:

**113.16(3)** *Educational opportunity.* Every foster child shall be given the opportunity to complete high school or vocational training in accordance with the child's aptitude case permanency plan. The foster parent shall be an advocate for the foster child by working with the foster child's school.

**113.16(4)** ~~Religious training~~ *Religion and culture.* Each child shall be given an opportunity, for religious training in consultation with the child's parents, to participate in the child's culture and religion. Whenever practicable, the child shall be placed with foster parents of the child's own religious faith, or in accordance with the wishes of the biological or adoptive parents. Children shall not be required to participate in religious training or observances contrary to the wishes of the biological, or adoptive family, or the religious beliefs of the child.

**113.16(6)** *Work assignments.* Work assignments shall be in keeping with the total healthy child's age and development of the child.

*a.* Exploitation of the child is prohibited. No child shall be permitted to do any hazardous tasks or to engage in any work which is in violation of the child labor laws of the state.

*b.* Each child shall have the opportunity to learn to assume some responsibility for self and for household duties in accordance with the child's age, health and ability. However, assigned tasks shall not deprive the child of school, sleep, play or study periods.

ITEM 25. Amend rule 441—113.18(237) as follows:

**441—113.18(237) Training and discipline of foster children.**

**113.18(1)** *Foster parents' methods of training and discipline.* The evaluation of the foster parent shall include a discussion and written report of the foster parents' methods of training and discipline. Discipline shall be designed to help the child develop self-control, self-esteem, and respect for the rights of others.

**113.18(2)** *Restrictions on training and discipline.* Child training and discipline shall be handled with kindness and understanding.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- a. A child shall not be locked in a room, closet, box, or other device.
- b. No child shall be deprived of food as punishment.
- c. No child shall be subjected to verbal abuse, threats or derogatory remarks about the child or the child's family.
- d. ~~Use~~ The use of corporal punishment is prohibited.
- e. Restraints shall not be used as a form of discipline.
- (1) Reasonable physical force may be used to restrain a child only in order to prevent injury to the child, injury to others, the destruction of property, or extremely disruptive behavior.
- (2) The foster parent shall receive training on the safe and appropriate use of restraints which has been approved as a part of the treatment plan by a licensed practitioner of the healing arts who is working with the child.

**113.18(3)** No change.

This rule is intended to implement Iowa Code sections 234.40 and 237.3.

ITEM 26. Amend subrule 113.19(1) as follows:

**113.19(1)** *Supervision and arrangements for emergency care.*

a. Foster parents shall provide supervision of foster children and children in preadoptive placement as dictated by the individual child's specific needs and in agreement with the supervising agency.

b. In case of emergency requiring the foster parents' temporary absence from the home, arrangements shall be made with other licensed foster parents or with designated, responsible persons for the care of the children during the period of absence. The child's placement worker shall be notified of all emergency absences of the foster parents.

ITEM 27. Amend rule 441—113.20(237) as follows:

**441—113.20(237) Changes in foster family home.** Foster parents shall notify the department and the recruitment and retention contractor within 30 seven working days of any change in the number of persons living in the home or of a move to a new home.

1. Any change in the number of persons living in the home (except for foster children);
2. A move to a new home; or
3. Any circumstances in the home that could negatively affect the health, safety or welfare of a child in the family's care

This rule is intended to implement Iowa Code section 237.3.

ITEM 28. Amend **441—Chapter 117** as follows:

## CHAPTER 117 FOSTER PARENT TRAINING

### PREAMBLE

These rules describe required foster parent orientation, preservice training and ~~preplacement orientation~~ in-service training. Their purpose is to ensure that the training and orientation is are effective in preparing foster parents for their role.

These rules also describe the standards for training and orientation and the procedure to be approved as a training provider.

**441—117.1(237) Required preservice training.** Foster parent preservice training shall be offered by the department or by a licensed child-placing agency through a training program that has been approved by the department pursuant to rule 441—117.5(237).

~~117.1(1) Providers of preservice~~ Preservice training requirement. ~~The required foster parent preservice training program shall be offered by the department or by a licensed child-placing agency with a training program that has been approved by the department.~~ Each individual foster parent

HUMAN SERVICES DEPARTMENT[441](cont'd)

applicant shall complete the entire “Partnering for Safety and Permanence: Model Approach to Partnership in Parenting” (PS-MAPP) curriculum developed by the Child Welfare Institute.

a. Applicants shall complete PS-MAPP training before receiving a license for the first time.

b. Applicants shall retake PS-MAPP if they do not complete the curriculum within 24 months after initially commencing it.

c. The department may waive the PS-MAPP training requirement in whole or in part when the department finds that:

(1) The applicant has completed relevant training or has a combination of relevant training and experience that is an acceptable equivalent to all or a portion of the required preservice training; or

(2) There is good cause for the waiver based upon the circumstances of the child and the applicant.

117.1(2) Preservice training program approval requirements:

a. Content. The program shall be designed to assist prospective foster parents in developing the understanding the philosophy and goals of foster care and the skills required of a foster parent and abilities that are essential to promote children’s safety, permanence, and well-being. The program shall address the following topics:

(1) to (11) No change.

~~The curriculum developed by the Child Welfare Institute “Partnering for Safety and Permanence: Model Approach to Partnership in Parenting” (PS MAPP) shall be considered as meeting this requirement.~~

b. Length. The entire PS-MAPP program shall total at least 30 hours of contact between leaders and participants. The department and each licensed child placing agency offering the mandatory 30 hours of PS-MAPP training department’s recruitment and retention contractor shall devise a procedure for parents applicants to make up any portions of training which are missed.

c. No change.

d. Group method. The program shall be provided in groups that consist of six or more persons. The training shall be offered to a foster family individually only when the foster family is unable to attend group training for reasons such as serious medical conditions, as approved by the social work administrator or designee.

e. and f. No change.

g. Training records. A record of the foster parents applicants who begin and complete the training and of the training program evaluations shall be submitted to the department office for the location in which the training was provided recruitment and retention contractor at the end of each 30-hour PS-MAPP session.

117.1(3) Universal precautions. Before licensure, each individual foster parent shall complete one hour of training related to the use and practice of universal precautions. Training shall be completed through the approved individual self-study course, “Universal Precautions in Foster and Adoptive Resource Family Homes.”

**441—117.2(237) Required preplacement orientation.** All foster parent applicants shall attend orientation before attending PS-MAPP training and before a foster child is placed in their home. Orientation shall not count toward the required 30 hours of preservice training.

117.2(1) Method of provision. The recruitment and retention contractor may provide orientation may be provided:

a. ~~in~~ In an individual meeting of the worker with one set of foster parents parent applicants; or

b. ~~in~~ In a group setting.

117.2(2) Provider. Orientation shall be provided by the department or licensed child placing agency recruitment and retention contractor completing the family’s licensing study. The agency intending to place children in foster care in the home shall review the orientation with the foster parent prior to placement.

117.2(3) Content. Orientation shall be designed to acquaint provide the foster parent applicant with information on the policies and procedures of the foster care program, and adoption programs and shall include the following:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

*a.* and *b.* No change.

*c.* ~~Reimbursement~~ Foster family reimbursement information and adoption subsidy information if applicable.

*d.* and *e.* No change.

**441—117.3(237) Application materials for in-service training.** Applications for approval of an in-service training program shall be submitted on Form 470-2541, Foster Parent Training Application, ~~with the following materials:~~ and must be approved before the delivery of the training. Applications submitted after a training is completed shall not be approved.

**117.3(1)** ~~A detailed program description, including objectives, agenda, content, participant materials and time frames or a statement that the Child Welfare Institute “Partnering for Safety and Permanence: Model Approach to Partnership in Parenting” (PS-MAPP), as described in paragraph 117.1(2)“a,” will be the preservice program taught. Except for cardiopulmonary resuscitation and first-aid training, foster parent in-service training shall meet the requirements in rule 441—117.7(237).~~

**117.3(2)** Applications shall be submitted with the following materials:

*a.* A detailed training program description relative to a foster parent, including objectives, program agenda, content, participant materials, and time frames.

*b.* Names of program instructors and their qualifications to provide the training.

~~117.3(3) Rescinded IAB 8/9/89, effective 10/1/89.~~

~~117.3(4) Rescinded IAB 8/9/89, effective 10/1/89.~~

~~117.3(5) A sample of the evaluation tool to be used (for preservice training only).~~

**441—117.4(237) Application process for in-service training.**

**117.4(1)** No change.

**117.4(2)** *Individual training.* Applications for approval for individual training, college credit, written materials, ~~or movies~~ DVDs or videotapes shall be submitted to the department office for the service area in which the foster family resides.

**441—117.5(237) Application decisions.** The department shall notify the applicant of its decision regarding the application for approval of in-service training within 30 days of receipt of the training materials described in rule 441—117.3(237). This notification shall include the reason for not giving approval if approval is denied.

**117.5(1)** *Approval.* Foster parent training programs which meet the criteria in rule 441—117.1(237) or in rule 441—117.7(237), and which are submitted pursuant to rules 441—117.3(237) and 441—117.4(237) shall be approved by the department. In-service training completed before the program has received department approval shall not count toward the required six credit hours of in-service training. In-service training approvals are valid for one year.

**117.5(2) to 117.5(4)** No change.

**441—117.6(237) Application conference available.** If an applicant or provider of training objects in writing within seven days after the notification of the department’s decision to deny ~~or revoke~~ approval, the ~~service area manager~~ social work administrator shall review the decision to determine if the original decision shall stand. The decision of the ~~service area manager~~ social work administrator is final and is not subject to an appeal.

**441—117.7(237) Required in-service training.** Training is required to assist foster parents in confidently and effectively addressing the needs of children placed in foster care. The Foster Parent Training Plan, Form 470-3341, shall be used to address in-service training needs. The training plan shall be developed with the department or retention and recruitment contractor and the foster parent at annual licensing renewal.

**117.7(1)** *Providers of in-service training.* Foster parent in-service training may be provided by the department, a licensed child-placing or child-caring agency, or an agency, institution, or association with expertise in ~~any of the training content areas in subrule 117.7(2), paragraph “a.”~~ Agencies, institutions,

## HUMAN SERVICES DEPARTMENT[441](cont'd)

or associations wishing to have a foster parent in-service training program or workshop approved shall submit application materials pursuant to rules 441—117.3(237) and 441—117.4(237).

**117.7(2) *In-service training program approval requirements:***

*a. Content.* The program shall relate to the foster parent's role in providing foster care and the skills needed by a foster parent. Training shall ~~address one or more of the following topics:~~ be specific to developing each foster parent's skills for addressing the needs of foster children.

~~Adolescence.~~

~~Adoption issues.~~

~~Cardiopulmonary resuscitation (CPR) or first aid.~~

~~Child abuse dynamics and effects.~~

~~Child abuse identification and reporting.~~

~~Child development.~~

~~Communication.~~

~~Confidentiality.~~

~~Conflict resolution in the family.~~

~~Crisis intervention.~~

~~Discipline and behavior management.~~

~~Educational needs of all children in foster care and working with the educational system.~~

~~Emotional and mental health needs of children and working with the mental health system.~~

~~Family dynamics.~~

~~Health needs of children in foster care and working with the medical system.~~

~~Identification, utilization and role of support systems.~~

~~Impact of physical abuse, neglect and sexual abuse.~~

~~Independent living skill training.~~

~~Juvenile court process.~~

~~Lifebooks.~~

~~Medical management for children.~~

~~Mental retardation and developmental disabilities in childhood.~~

~~Parenting.~~

~~Participation in juvenile court hearings.~~

~~Participation in foster care reviews.~~

~~Passive restraint of children.~~

~~Permanency planning.~~

~~Physical disabilities in children.~~

~~Physical therapy with children.~~

~~Record keeping for foster care.~~

~~Role of guardian ad litem and court appointed special advocate (CASA).~~

~~Self care skill training with children.~~

~~Separation and attachment.~~

~~Sexuality of children.~~

~~Sign language.~~

~~Stress and foster parenting.~~

~~Substance abuse in children.~~

~~Suicide prevention with children.~~

~~Teamwork and team approach to foster care case planning.~~

~~Understanding, supporting, and working with the child's birth family.~~

~~Use of community resources for children and families.~~

~~Other topics related to foster parenting or the needs of a child in placement.~~

*b. Method.* The training shall be provided through one or more of the following methods:

(1) to (3) No change.

(4) ~~Movies~~ DVDs or videotapes.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(5) Internet training classes offered through the Iowa Foster and Adoptive Parents Association (IFAPA).

(6) Internet training classes offered through www.fosterparents.com, except for cardiopulmonary resuscitation and first-aid trainings, which are not approved. These Internet classes cannot be repeated for training credit within a five-year period.

*c. Credit hours.* Credit hours for approved training shall be as follows:

(1) and (2) No change.

(3) ~~Movies~~ DVDs or videotapes shall receive one credit hour for each two program hours.

(4) No change.

~~(5) Self Instructional Pieces shall receive one credit hour per piece.~~ Internet training classes shall receive one credit hour for each two program hours. A maximum of three hours of training credit per year may be earned through the Web site www.fosterparents.com.

*d. Approved training.* The following training programs shall be considered as meeting the in-service training requirements:

(1) to (3) No change.

~~(4) Self Instructional Piece Series (SIPS) published by American Foster Care Resources, Inc.~~

**117.7(3) Foster parent training requirements.** Each individual foster parent shall complete six credit hours of department-approved in-service training annually. Failure to meet the requirement for in-service training hours will result in denial of the license renewal.

*a. Training cycle.* “Annually” means within the annual training cycle as described in this paragraph.

(1) Initial license. For a newly licensed foster parent, the initial training cycle shall be the 10-month period ending two months before the license expires. EXAMPLE: The initial training cycle for a new license effective June 1 is June 1 through March 31.

(2) Renewal license. For a license renewal, the annual training cycle shall be the 12-month period beginning two months before the expiration of the previous license and ending two months before the expiration of the subsequent license. EXAMPLE: Subsequent training cycles for a license effective June 1 will be April 1 through March 31.

(3) Transition period. For all foster parents who have a license with an effective date of September 1, 2008, to August 1, 2009, the transition to the new training cycle shall take place through a 10-month training cycle that begins at the next license renewal.

*b. Content.* The choice of in-service training shall be based upon an assessment of the foster parent’s training needs made by the foster parent and the recruitment and retention contractor in collaboration with the department licensing worker.

(1) Each foster parent must complete the specific training required in rule 441—117.8(237).

(2) At least three credit hours of the annual training shall be group training.

(3) Except for the classes for mandatory reporters, cardiopulmonary resuscitation, and first aid, training credit will not be allowed for any in-service training class that is repeated.

*c. Documentation.* Each individual foster parent shall submit Form 470-2540, Foster Parent Training Report, to the recruitment and retention contractor within 30 days after completion of each in-service training.

**441—117.8(237) Advisory committee Specific in-service training required.** ~~Rescinded IAB 12/11/02, effective 2/1/03.~~

**117.8(1) Medication management.** Within the initial training cycle, each individual foster parent shall complete one hour of training related to the use and practice of medication management.

*a.* Training shall be completed through the approved individual self-study course, “Medication Management.”

*b.* One hour of in-service training credit shall be allowed for completion of this self-study course. This course cannot be repeated for in-service training credit.

*c.* Foster parents who are already licensed on September 1, 2009 [the expected effective date of this rule], shall complete this training by September 1, 2010.

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**117.8(2) Cardiopulmonary resuscitation (CPR).** All foster parents shall be certified in CPR every three years and shall maintain a certificate indicating the date of training and expiration.

a. The training shall be provided by:

(1) A nationally recognized training organization, such as the American Red Cross, the American Heart Association, the National Safety Council, or Emergency Medical Planning (Medic First Aid); or  
(2) An equivalent certified trainer and curriculum approved by the department.

b. Newly licensed foster parents shall complete the training before the end of their initial training cycle. Foster parents who are already licensed on September 1, 2009 [the expected effective date of this rule], shall complete this training by September 1, 2010.

**117.8(3) First aid.** All foster parents shall be certified in first aid every three years and shall maintain a certificate indicating the date of training and expiration. Newly licensed foster parents shall complete the training before the end of their initial training cycle. Foster parents who are already licensed on September 1, 2009 [the expected effective date of this rule], shall complete this training by September 1, 2010.

**117.8(4) Child abuse reporting.** Each foster parent shall complete approved training relating to the identification of child abuse and requirements and procedures for the reporting of child abuse pursuant to Iowa Code section 232.68.

a. Training cycle. Newly licensed foster parents shall complete mandatory reporter training before the end of their initial training cycle. The training shall be repeated every five years thereafter.

b. Training provider. The foster parent shall be responsible for obtaining the required two-hour mandatory reporter training in child abuse identification and reporting as approved by the Iowa department of public health. A list of approved training opportunities is available at: [http://www.idph.state.ia.us/bh/abuse ed review.asp](http://www.idph.state.ia.us/bh/abuse_ed_review.asp).

c. Documentation. The foster parent shall secure documentation of the training content, amount, and provider and shall forward the documentation to the recruitment and retention contractor, who will provide the documentation to the department for inclusion in the licensing file.

**117.8(5) Caring for children with HIV.** Before placement of an HIV-infected child occurs, the foster parents shall complete the course “Caring for Children With HIV” or an approved alternative course that contains information on the unique aspects of pediatric HIV disease, transmission and infection control, the spectrum of HIV disease, confidentiality, death and bereavement, and self-care for the caregiver.

**441—117.9(237) Foster parent training expenses.** No expense stipend is provided for orientation or preservice training.

**117.9(1) Training stipend.** Each family that is issued an initial or renewal foster home license shall receive a \$100 stipend to be used for the family’s annual in-service training. The department’s recruitment and retention contractor shall issue one stipend per license on or after the date that the license is issued. Foster families who elect not to receive the \$100 stipend shall notify the department.

**117.9(2) Trainer fees.** Foster parents and social workers who serve as trainers for approved preservice training programs shall each be paid a contract fee per class hour appropriate to community standards based upon the education and experience of each trainer. These rates shall be negotiated between the recruitment and retention contractor and the trainer.

These rules are intended to implement Iowa Code section 237.5A.

ITEM 29. Amend **441—Chapter 156**, title, as follows:

**PAYMENTS FOR FOSTER CARE  
AND FOSTER PARENT TRAINING**

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 30. Rescind the definitions of “Basic family foster care,” “Basic maintenance payment,” “Difficulty of care maintenance payment,” “Mentally retarded,” “Personal allowance,” “Required school fees” and “Substance abuse treatment supervisor” in rule **441—156.1(234)**.

ITEM 31. Amend rule **441—156.1(234)**, definitions of “Cost of foster care,” “Family foster care supervision,” “Foster care,” “Foster family care,” “Mental health professional,” “Mental retardation professional” and “Special needs child,” as follows:

“*Cost of foster care*” means the maintenance and supervision costs of foster family care, the maintenance costs and child welfare service costs of group care, and the maintenance and service costs of supervised apartment living and shelter care. The cost for foster family care supervision and for supervised apartment living services, when provided directly by the department caseworker rather than purchased from a provider, shall be \$250 per month. When using this average monthly charge results in unearned income or parental liability being collected in excess of the cost of foster care, the excess funds shall be placed in the child’s escrow account. The cost for ~~foster family supervision and supervised apartment living services purchased from a private provider~~ shall be the actual costs paid by the department.

“*Family foster care supervision*” means the support, assistance, and oversight provided by department ~~or private agency~~ caseworkers to children in family foster care which is directed toward achievement of the child’s permanency plan goals.

“*Foster care*” means substitute care furnished on a 24-hour-a-day basis to an eligible child, in a licensed or approved facility, by a person or agency other than the child’s parent or guardian, but does not include care provided in a family home through an informal arrangement for a period of ~~less than~~ 20 days or less. Child foster care shall include but is not limited to the provision of food, lodging, training, education, supervision and health care.

“*Foster family care*” means foster care provided in a single family living unit by a foster family licensed by the department according to 441—Chapter 113 or licensed or approved by the state in which it is located. The care includes the provision of food, lodging, clothing, transportation, recreation, and training that is appropriate for the child’s age and mental and physical capacity.

“*Mental health professional*” means ~~the same as defined in rule 441—24.61(225C,230A):~~ a person who meets all of the following conditions:

1. Holds at least a master’s degree in a mental health field including, but not limited to, psychology, counseling and guidance, psychiatric nursing and social work; or is a doctor of medicine or osteopathic medicine; and
2. Holds a current Iowa license when required by the Iowa professional licensure laws (such as a psychiatrist, a psychologist, a marital and family therapist, a mental health counselor, an advanced registered nurse practitioner, a psychiatric nurse, or a social worker); and
3. Has at least two years of postdegree experience supervised by a mental health professional in assessing mental health problems, mental illness, and service needs and in providing mental health services.

“*Mental retardation professional*” means ~~the same as defined in the department of inspections and appeals subrule 481—57.1(15)~~ a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and has one year of experience working with persons with mental retardation.

“*Special needs child*” means a child with ~~one or more of the following conditions:~~ needs for emotional care, behavioral care, or physical and personal care which require additional skill, knowledge, or responsibility on the part of the foster parents, as measured by Form 470-4401, Foster Child Behavioral Assessment. See subrule 156.6(4).

1. ~~The child has been diagnosed by a physician to have a disability which substantially limits one or more major life activities; and requires professional treatment, assistance in self care, or the purchase of special adaptive equipment.~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~2. —The child has been determined by a qualified mental retardation professional to have mental retardation.~~

~~3. —The child has been diagnosed by a qualified mental health professional to have a psychiatric condition which impairs the child's mental, intellectual, or social functioning.~~

~~4. —The child has been diagnosed by a qualified mental health professional to have a behavioral or emotional disorder characterized by situationally inappropriate behavior, which deviates substantially from behavior appropriate to the child's age or which significantly interferes with the child's intellectual, social, or personal adjustment.~~

~~5. —The child has been diagnosed by a qualified medical professional, mental health professional, or substance abuse treatment supervisor as having a substance abuse problem.~~

~~6. —The child is an unaccompanied refugee minor.~~

~~7. —The child has been adjudicated delinquent.~~

~~8. —The child has been diagnosed as HIV infected or has had an HIV positive test result by a qualified medical professional.~~

ITEM 32. Amend subrule 156.6(5) as follows:

**156.6(5) *Payment method.*** All foster family maintenance payments ~~to foster families supervised by the department or a licensed private child caring agency~~ shall be made directly to the foster family ~~by the department.~~

ITEM 33. Adopt the following **new** subrule 156.6(6):

**156.6(6) *Return of overpayments.*** When a foster family has received payments in excess of those allowed under this chapter, the department caseworker shall ask the foster family to return the overpayment. If the foster family is returning the overpayment to the department, the caseworker will note the monthly amount the foster family agrees to pay in the family's case file. The amount returned shall not be less than \$50 per month.

ITEM 34. Amend rule 441—156.8(234), catchwords, as follows:

**441—156.8(234) *Special needs Additional payments.***

ITEM 35. Amend paragraph **156.8(1)“a”** as follows:

*a.* A second clothing allowance, not to exceed \$200 for family foster care and \$100 for all other levels, may be approved, not more than once within a calendar year, by the department worker when a child in foster care needs clothing to replace lost clothing or because of unusual growth or weight change, and the child does not have sufficient escrow funds to cover the cost.

ITEM 36. Amend subrules 156.8(6) to 156.8(8) as follows:

**156.8(6) *School fees.*** Payment for required school fees of a child in foster family care or supervised apartment living ~~exceeding that exceed~~ \$5 may be authorized by the department worker in an amount not to exceed \$50 per calendar year if the child does not have sufficient escrow funds to cover the cost. Required school fees shall include:

*a.* Fees required for participation in school or extracurricular activities; and

*b.* Fees related to enrolling a child in preschool when a mental health professional or a mental retardation professional has recommended school attendance.

**156.8(7) *Respite care.*** The service area manager or designee may authorize respite for a child in family foster care for up to 24 days per calendar year per placement. Respite shall be provided by a licensed foster family. The payment rate to the respite foster family shall be the rate authorized under rule 441—156.6(234) to meet the needs of the child, ~~with the exception of paragraphs 156.6(4)“b” and “e.”~~

~~*a.* —Rescinded IAB 11/8/06, effective 11/1/06.~~

~~*b.* —Rescinded IAB 11/8/06, effective 11/1/06.~~

~~*e.* —Rescinded IAB 11/8/06, effective 11/1/06.~~

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**156.8(8) Tangible goods, child care, and ancillary services.** To the extent that a foster child's escrow funds are not available, the service area manager or designee may authorize reimbursement to foster parents for the following:

- a. No change.
- b. Child care services when the foster parents are working, the child is not in school, and the provision of child care is identified in the child's case permanency plan.
  - (1) Child care services shall be provided by a licensed foster parent or a licensed or registered child care provider when available.
  - (2) When foster parents elect to become child care providers, they shall be registered pursuant to 441—Chapter 110. However, foster parents shall not displace a foster child to another child care facility to benefit their child care business.
- c. to f. No change.

ITEM 37. Amend subrule 156.10(2) as follows:

**156.10(2) Foster family care.**

- a. *Family visits.* Reserve bed payment shall be made for days a foster child is absent from the foster family home for family visits when the absence is in accord with the following:
  - (1) to (8) No change.
- b. *Hospitalization.* Reserve bed payment shall be made for days a foster child is absent from the foster family home for hospitalization when the absence is in accord with the following:
  - (1) to (3) No change.
  - (4) If the department and the foster family agree that the return would not be in the foster child's best interest, payment shall be canceled effective the day after the joint decision not to return the child.
  - (5) to (7) No change.
- c. *Runaways.* Reserve bed payment shall be made for days a foster child is absent from the foster family home after the child has run away when the absence is in accord with the following:
  - (1) to (7) No change.
- d. *Preplacement visits.* Reserve bed payment shall be made when a foster child is making a planned preplacement visit to another foster care placement or an adoptive placement when the absence is in accord with the following:
  - (1) and (2) No change.
  - (3) ~~Staff from the foster family home shall be available to provide support to the child and provider during the visit. Reserved.~~
  - (4) and (5) No change.
  - (6) ~~If services are purchased, the provider shall document the use of reserve bed days in the daily log and report the number of reserve bed days claimed in the quarterly report.~~

ITEM 38. Amend rule 441—156.17(234) as follows:

**441—156.17(234) Adoptive Preadoptive homes.** Payment for a foster care for a child placed in an adoptive a preadoptive home will only be made when the placement is made in anticipation of a subsidized adoption. The payment shall be limited to the amount anticipated for subsidy, and shall terminate when the adoption decree is granted negotiated pursuant to rule 441—201.5(600) and shall not exceed the foster care maintenance amount paid in family foster care.

This rule is intended to implement Iowa Code section 234.38.

ITEM 39. Rescind and reserve rule **441—156.18(237)**.

ITEM 40. Amend subrule 156.20(2) as follows:

**156.20(2) Provider eligibility for payment.** ~~Except for payments for foster parents or youth in supervised apartment living, payment shall be limited to providers with a purchase of service contract in force.~~

- a. Providers of shelter care services and supervised apartment living services shall have a purchase of service contract under 441—Chapter 150 in force.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

b. Providers of group care services shall have a ~~purchase of rehabilitative treatment and supportive foster group care services contract~~ under 441—Chapter 152 in force.

ITEM 41. Rescind the definition of “Easy-to-place child” in rule **441—200.1(600)**.

ITEM 42. Amend rule **441—200.1(600)**, definitions of “Foster family adoption,” “Postadoption services” and “Preadoptive family,” as follows:

“*Foster family adoption*” means the adoption of a child by a licensed foster family who has cared for the child before the termination of parental rights to the child.

“*Postadoption services*” includes those services that an adoptive family may access after the adoption is finalized. ~~These services may be obtained through community resources, the department, or support groups,~~ to assist the family in coping with and resolving problems within the family.

“*Preadoptive family*” means an approved adoptive family with a child placed in the home for adoption whose adoption has not been finalized.

ITEM 43. Adopt the following new definitions in rule **441—200.1(600)**:

“*Family safety, risk, and permanency service*” means a service provided under 441—Chapter 172 that uses strategies and interventions designed to achieve safety and permanency for a child with an open department child welfare case, regardless of the setting in which the child resides.

“*Recruitment and retention contractor*” means the entity that contracts with the department statewide to recruit foster and adoptive parents, complete home studies, and perform activities to support and encourage retention of foster and adoptive parents, or any of its subcontractors.

“*Relative within the fourth degree of consanguinity*” means an adult who is related to a child as follows:

1. The child’s parent, brother, or sister (first degree);
2. The child’s grandparent, aunt, uncle, niece, nephew, or first cousin (second degree);
3. The child’s great grandparent, great aunt, great uncle, great niece, great nephew, first cousin once removed, or second cousin (third degree); or
4. The child’s great-great grandparent, great-grand aunt, great-grand uncle, great-grand niece, great-grand nephew, first cousin twice removed, second cousin once removed, or third cousin (fourth degree).

ITEM 44. Amend subrule 200.2(3) as follows:

**200.2(3) Forms.** ~~Forms 470-3615, Background Report Part 1, and 470-3698, Background Report Part 2, A child study shall be completed for all children who are adopted under Iowa Code chapter 600 using the outline RC-0027, Social History Format. All forms used to execute a release of custody shall comply with the requirements of Iowa Code chapters 600 and 600A.~~

ITEM 45. Amend subrule **200.2(4)**, introductory paragraph, as follows:

**200.2(4) Affidavit and documentation.** The person providing the counseling shall complete Form 470-3164 or 470-3164(S), Counseling Affidavit, certifying that the counselor has provided the biological parent with the requested counseling or that the biological parent has refused counseling. ~~Form 470-3164~~ The Counseling Affidavit and documentation that the person providing the counseling is qualified to provide the requested counseling shall be attached to the release of custody. Documentation shall include one of the following:

ITEM 46. Amend rule 441—200.3(600) as follows:

**441—200.3(600) Application.** Persons wishing to apply to adopt a child through the department shall use Form ~~470-0771~~ 470-0743 or 470-0743(S), Application for Adoption. An application for adoption shall only be accepted for children who are under the guardianship of the department.

**200.3(1) Limitations.** ~~No applications shall be accepted or approved in any department office for the adoption of an easy-to-place child. The department and its recruitment and retention contractor shall accept only applications for adoption of a special needs child. Those applicants Applications for adoption of a child without special needs shall be referred to private child-placing agencies. Exceptions to this rule may be made for:~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- ~~a. relatives~~ Relatives of a child under the guardianship of the department; or  
~~b. foster~~ Foster parents applying to adopt a child with whom the child has a significant relationship.
- ~~a. — Foster parents. Foster parents shall be given consideration for selection as the adoptive family for a child in the foster parent's care who is legally available for adoption if the child has been in the foster parent's care for one year or longer, or the child has a significant relationship with the family.~~
- ~~b. — Relatives. — A relative who is within the fourth degree of consanguinity shall be given consideration for selection as the adoptive placement for a child who is legally available for adoption if the child has a significant relationship with the relative, or the child is aged 14 or over and elects adoption by the relative.~~

**200.3(2) Procedures.** An application for a special needs child shall be accepted by any department office or by the department's recruitment and retention contractor. ~~If a family assessment and home study cannot be begun by a department worker within 90 days, a referral shall be made to purchase a home study from a provider with whom the department has a purchase of service contract within available funding. Prior to completion of~~ Before a home study is completed, applicants shall:

- ~~a. complete~~ Complete Form 470-0771, Foster Care and Adoption Home Study Packet, 470-0743 or 470-0743(S), Application for Adoption, and
- ~~b. ensure~~ Ensure that Form 470-0720, Physician's Report for Foster and Adoptive Parents, is completed by ~~their~~ the applicant's family physician.

ITEM 47. Amend rule 441—200.4(600) as follows:

**441—200.4(600) Components of adoption Adoption services.** ~~The components of adoption~~ Adoption services ~~are as follows~~ shall include: adoptive home study, preparation of child, selection of family, preparation of family, preplacement visits, placement services, and postplacement services.

**200.4(1) Adoptive home study.** ~~This component includes~~ The recruitment and retention contractor shall prepare an adoptive home study through the following activities:

- ~~a. to d.~~ No change.
- ~~e. Procedure for foster parent adoptions.~~ When a licensed foster parent applies for approval as an adoptive home, home study activities that have been completed within the previous year as part of a licensing study pursuant to 441—Chapter 113 need not be repeated.

**200.4(2) Preparation of child.** ~~This component includes~~ The department adoption worker shall conduct specific activities designed to enable a child to make the transition to an adoptive placement or refer the child to the family safety, risk, and permanency services contractor or other professionals. The activities shall include, but are not limited to:

- ~~a. to e.~~ No change.
- 200.4(3) Selection of family.** ~~This component includes the activities necessary to select the~~ The family ~~which that~~ can best meet the needs of the adoptive child: shall be selected as follows:

~~a. Prior to~~ Before preplacement visits occur, a staffing of the child conference shall be held to select an approved family. A minimum of two social workers and a supervisor shall be included in the staffing conference. The child's special needs, characteristics, and anticipated behaviors shall be reviewed in the staffing conference to determine a family that can best meet the needs of the child. Approved families shall also be reviewed in an effort to match the specific family's parenting strengths with a particular child's needs.

- ~~b.~~ The following selection criteria shall be observed:
- ~~a. (1)~~ Preference shall be given to placing children from the same birth family together. If placement together is not possible, or is not in the best interest of the children, the reasons shall be identified and documented in each child's case record. Efforts shall be made to ensure continuous contact between siblings when the siblings are not placed together.
- ~~b. (2)~~ Race, color, or national origin may not be routinely considered in placement selections. Placement decisions shall be made consistent with the best interests and special needs of the child.
- ~~e. (3)~~ A child who is sexually active and at risk of or is HIV positive shall not be placed in a family where other children reside due to the risk of transmission. A relative who is within the fourth degree of consanguinity shall be given consideration for selection as the adoptive family for a child who

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is legally available for adoption if the child has a significant relationship with the relative or the child is aged 14 or older and elects adoption by the relative.

(4) Foster parents shall be given consideration for selection as the adoptive family for a child in the foster parents' care who is legally available for adoption if the child has been in the foster parents' care for one year or longer or the child has a significant relationship with the family.

**200.4(4) Preparation of family.** ~~This component includes~~ The recruitment and retention contractor and the department adoption worker shall conduct activities designed to assist the adoptive family in expanding its knowledge and understanding of the child or children. ~~This component~~ These activities should enhance the family's readiness to accept the child or children into their family and encourage their commitment. A referral may be made for family safety, risk, and permanency services if needed. The activities shall include, but are not limited to:

a. to h. No change.

**200.4(5) Preplacement visits.** ~~This component includes activities necessary to~~ The department worker shall plan, conduct and assess the transitional visits between the adoptive family and the child or children prior to before the adoptive placement of the child in the home.

**200.4(6)** No change.

**200.4(7) Postplacement services.** ~~Postplacement~~ An adoptive family is eligible for postplacement services include supervision, support, crisis intervention and required reports. Postplacement supervision is provided from the time a child is placed with an adoptive the family until finalization of the adoption occurs. The department adoption worker shall supervise the placement, provide ongoing support to the child and family, perform crisis intervention, and complete required reports. Assistance with behavioral interventions to strengthen the placement and prevent disruption may be provided through family safety, risk, and permanency services.

a. No change.

b. ~~A~~ At a minimum, of three the department adoption worker shall make monthly adoptive home visits are required or, until the adoption is final. If the family is experiencing problems, the worker shall make as many visits as are necessary to assess and support the placement.

~~Home visits shall be completed at a minimum as follows: one no later than 30 days after placement, one no later than 90 days after placement, and a final visit before requesting a consent to adopt. Supervisory reports based on observations shall be completed after the home visits using Form 470-0773, Supervisory Report.~~

c. ~~A~~ The department adoption worker shall prepare a written report based on the postplacement visits with recommendations regarding the finalization of the adoption shall be submitted and submit the report to the court prior to before the hearing to consider granting a decree of adoption.

**200.4(8) Postadoption services.** The department's recruitment and retention contractor shall provide postadoption services to families that are eligible for the department's adoption subsidy program in accordance with the contract. The goal of these services is to prevent adoption dissolution. The family may obtain additional support through community resources or support groups.

ITEM 48. Rescind and reserve rules **441—200.6(600)**, **441—200.7(600)** and **441—200.9(600)**.

ITEM 49. Amend rule 441—200.10(600) as follows:

**441—200.10(600) Requests for home studies.**

**200.10(1) Court-ordered.** Court-ordered home studies for adoption or custody of a child or children under the authority of the department shall be completed by department workers the department's recruitment and retention contractor. When a department worker completes the court-ordered home study, a fee shall be assessed the family based on subrule 200.7(2).

**200.10(2) Interstate compact.** Requests for an adoptive home study through the interstate compact process shall be completed by a department worker and the family assessed a fee based on the department's current fee schedule the department's recruitment and retention contractor. No fee shall be charged the family if they are a relative of the child within the fourth degree of consanguinity, or the family is the child's foster family.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~**200.10(3) Referrals.** Families wishing to adopt an easy-to-place child shall be referred to a child-placing agency or a certified adoption investigator for completion of the home study. Payment of a fee for completion of the home study shall be the family's responsibility.~~

ITEM 50. Amend rule 441—200.15(600) as follows:

**441—200.15(600) Requests for information for purposes other than research or treatment.** Requests for information from department adoption records for purposes other than research or treatment shall be made to the Department of Human Services, Division of ~~Behavioral, Developmental, Child~~ and ~~Protective Family~~ Services, Adoption Program, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

**200.15(1)** The department shall not release identifying information from sealed adoption records. Adult adoptees, adoptive parents, birth parents, siblings or descendants of an adopted person, or legal representatives of any of the above shall be provided:

- a. ~~an~~ An adoption packet containing a sample affidavit for filing with the court,
- b. ~~directions~~ Directions for filing the affidavit,
- c. ~~a~~ A list of county clerks of court, ~~and~~
- d. ~~the~~ The address of the bureau of vital statistics ~~which retains, and~~
- e. Instructions on how to obtain the name of the Iowa county where ~~their~~ the adoption was finalized ~~in Iowa, if necessary.~~

**200.15(2)** An adopted person who was a resident of the Annie Wittenmeyer Home (Iowa Soldier's and Sailor's Home) may receive nonidentifying information from Annie Wittenmeyer records if the information is available.

ITEM 51. Amend ~~441—Chapter 202~~, title, as follows:

#### FOSTER CARE PLACEMENT AND SERVICES

ITEM 52. Amend rule ~~441—202.1(234)~~, definition of "Foster care," as follows:

*"Foster care"* shall mean substitute care furnished on a 24-hour-a-day basis to an eligible child, in a licensed ~~foster care facility~~ or approved ~~shelter care facility~~, by a person or agency other than the child's parent or guardian, but does not include care provided in a family home through an informal arrangement for a period of ~~less than 30~~ 20 days or less. Child foster care shall include but is not limited to the provision of food, lodging, training, education, supervision, and health care.

ITEM 53. Adopt the following new definitions in rule ~~441—202.1(234)~~:

*"Family safety, risk, and permanency service"* means a service provided under 441—Chapter 172 that uses strategies and interventions designed to achieve safety and permanency for a child with an open department child welfare case, regardless of the setting in which the child resides.

*"Foster family adoption"* means the adoption of a child by a licensed foster family who has cared for the child.

*"Resource family"* means an individual person or married couple who is licensed to provide foster family care or approved for adoption.

*"Social history"* or *"child study"* means a written description of the child that includes strengths and needs; medical, mental, social, educational, placement and court history; and the child's relationships with the birth family and significant others.

ITEM 54. Amend subrules 202.2(2) and 202.2(3) as follows:

**202.2(2)** The need for foster care placement and social and other related services, including, but not limited to, medical, psychiatric, psychological, and educational services, shall be determined by an assessment of the child and family to determine their needs and the appropriateness of services.

- a. Assessments shall include:
  - (1) ~~the~~ The educational, physical, psychological, social, family living, and recreational needs of the child, ~~and~~
  - (2) ~~the~~ The family's ability to meet those needs, ~~and~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) A family genogram to determine relatives and other suitable support persons who have a kinship bond with the child.

b. The assessment is a continual process to identify needed changes in service or placement for the child.

**202.2(3)** With the exception of emergency care, a social history shall be completed on each child ~~prior to~~ before a department recommendation for foster care placement, using the outline RC-0027, Social History Format.

a. For voluntary emergency placements, a social history shall be completed before a decision is made to extend the placement beyond 30 days.

b. For court-ordered emergency placements, a social history shall be completed before the disposition hearing.

ITEM 55. Amend subrule 202.3(3) as follows:

**202.3(3)** Voluntary placement of a child aged 18 or older may be granted for six months at a time.

a. The department shall enter into the agreement only when the child:

(1) ~~meets~~ Meets the definition of "child" in rule 441—202.1(234) Iowa Code section 234.1,

(2) ~~was~~ Was in foster care or a state institution immediately before reaching the age of 18,

(3) ~~has~~ Has continued in foster care or a state institution in Iowa since reaching the age of 18, and

(4) ~~has~~ Has demonstrated a willingness to participate in case planning and to fulfill responsibilities as defined in the case plan.

b. Payment shall be limited pursuant to 441—paragraph 156.20(1) "b."

~~a. c.~~ When the voluntary placement is of a child who is aged 18 or older and who has a court-ordered guardian, the Voluntary Foster Care Placement Agreement, Form 470-0715, shall be completed and signed by the guardian and the ~~county~~ local office where the guardian resides. Voluntary Foster Care Placement Agreements shall not be used to place children outside Iowa and shall not be signed with guardians who reside outside Iowa. Voluntary Foster Care Placement Agreements shall terminate if the child's guardian moves outside Iowa after the placement.

~~b. d.~~ When the voluntary placement is of a child who is aged 18 or older and who does not have a court-appointed guardian, the Voluntary Foster Care Placement Agreement, Form 470-0715, shall be completed and signed by the child and the ~~county~~ local office where the child resides.

~~e. e.~~ An exception to the requirement for continuous placement may be made for a youth who leaves foster care at age 18 and voluntarily returns to supervised apartment living foster care before the youth's twentieth birthday in order to complete high school or obtain a general equivalency diploma (GED).

ITEM 56. Amend subrules 202.4(3) to 202.4(6) as follows:

**202.4(3)** ~~Staff~~ The department shall first consider placing the child in a relative's home unless to do so would interfere with the permanency plan for the child, no relatives are available or willing to accept placement, or to do so would be detrimental to the child's physical, emotional or mental well-being.

a. If a relative or a suitable person who has a kinship bond with the child will accept placement of the child:

(1) The person shall sign Form 595-1489, Non-Law Enforcement Record Check Request, and

(2) The department shall complete record checks as listed in 441—subrule 113.13(1) to evaluate if the person's home is appropriate for the child before making the placement.

b. Efforts to place the child in a relative's home and reasons for using a nonrelative placement shall be documented in the child's case permanency plan.

**202.4(4)** If the child cannot be placed with a relative or a suitable person who has a kinship bond with the child, foster family care shall be used for a child unless the child has problems requiring which require specialized ~~service which~~ services that cannot be provided in a family setting. Reasons for using a more restrictive placement shall be documented in the child's case permanency plan.

**202.4(5)** A foster family shall be selected on the basis of compatibility with the child, taking into consideration:

a. No change.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

*b.* The child's individual problems, medical needs, and plans for future care. The department shall not place a child with asthma or other respiratory health issues in a foster home where any member of the household smokes.

*c. to f.* No change.

**202.4(6)** A foster group care facility shall be selected on the basis of its ability to meet the needs of the child, promote the child's growth and development, and ensure physical, intellectual and emotional progress during the stay in the facility. The department shall place a child only in a licensed or approved facility which has a current ~~purchase of service~~ contract with the department pursuant to 441—Chapter 152.

ITEM 57. Amend subrule 202.5(1) as follows:

**202.5(1)** Except for ~~emergency foster care~~ placements made in less than 24 hours, a child placed in a facility shall have a preplacement visit involving:

- a.* ~~the~~ The child,
- b.* ~~the~~ The foster parents or agency staff, if the child is placed in a public or private agency, ~~and~~
- c.* ~~the~~ The department service worker, ~~and~~
- d.* The child's parents ~~shall be included in the preplacement visit,~~ unless their presence would be disruptive to the child's placement.

ITEM 58. Amend subrules 202.6(1) and 202.6(2) as follows:

**202.6(1)** At the time of placement, the department worker shall ~~provide the facility with specific~~ furnish to the foster care provider any available information regarding the child ~~including.~~

- a.* The information provided shall include:
  - (1) The child's full name and date of birth;
  - (2) The names, work addresses, and telephone numbers of the placement worker and the worker's supervisor, including a home telephone, cell phone, or on-call number;
  - (3) The names, addresses, and telephone numbers of the child's physician and dentist;
  - (4) The names, addresses, and telephone numbers of significant relatives of the child, including parents, grandparents, brothers and sisters, aunts and uncles, and any other significant persons (for an adopted child, the adoptive parents and adoptive relatives);
  - (5) ~~the~~ The case permanency plan;
  - (6) ~~the~~ The results of a physical examination, including immunization history;
  - (7) ~~the~~ The child's medical needs including allergies, physical limitations, dental and medical recommendations, and special needs of HIV;
  - (8) ~~behavioral~~ Behavioral patterns including safety-related information, ~~and;~~
  - (9) ~~educational~~ Educational arrangements including, but not limited to, the school the child attends, special education needs, and school contacts;
  - (10) ~~the~~ The placement contract or agreement including the date of acceptance for care; and
  - (11) ~~medical~~ Medical authorizations, service authorizations, and other releases as needed.

~~*a. b.*~~ Before releasing specific information about HIV, the department shall use Form 470-3225, Authorization to Release HIV-Related Information, to obtain a release from the child or the child's parent or guardian, or a court order permitting the release of the information.

(1) and (2) No change.

~~*b. c.*~~ Safety-related information shall be withheld only if:

(1) and (2) No change.

**202.6(2)** For each foster care placement in a foster family home supervised directly by department staff, Form 470-0716 or 470-0716(S), Foster Family Placement Contract, shall be completed by the ~~provider foster family and department representatives~~ the placement worker and supervisor. A new foster family placement contract shall be completed when the rate of payment or special provisions change.

ITEM 59. Amend subrule 202.8(1) as follows:

**202.8(1)** The department shall make an out-of-state foster family care placement only with the approval of the service area manager or designee. Approval shall be granted only when the placement

## HUMAN SERVICES DEPARTMENT[441](cont'd)

will not interfere with the goals of the child's case permanency plan and when one of the following conditions exists:

*a. to d.* No change.

ITEM 60. Adopt the following **new** subrules 202.11(5) and 202.11(6):

**202.11(5)** Throughout the provision of care, the foster care provider shall actively ensure that the child stays connected to the child's kin, culture, and community as documented in the child's case permanency plan.

**202.11(6)** When the child has reached the age of majority under state law, the department shall provide a free copy of the child's health and education records to the child when the child leaves foster care.

ITEM 61. Amend subrules 202.12(1) and 202.12(4) as follows:

**202.12(1)** ~~Social~~ Child welfare services and treatment services shall be made available to the parents throughout the period of placement for the purpose of reuniting the family in an agreed-upon time frame. Family safety, risk, and permanency services may be provided to:

*a.* Promote identification and enhancement of family strengths and protective capacities;

*b.* Address the factors that resulted in the child's being removed from the family home; and

*c.* Strengthen family connections to community resources and informal supports.

**202.12(4)** Personal contact shall be made regularly with the parents and the progress towards goal attainment reviewed and documented in the case record. The frequency of the personal contact shall be at least monthly and shall be specified in the child's case permanency plan.

ITEM 62. Amend subrule 202.13(3) as follows:

**202.13(3)** If a foster family objects in writing within seven days from the date that the ~~information~~ department furnishes notice of plans to remove the child ~~is mailed~~, the service area manager or designee shall grant a conference to the foster family to determine that the removal is in the child's best interest.

*a.* This conference shall not be construed to be a contested case under the Iowa administrative procedure Act, Iowa Code chapter 17A.

*b.* The conference shall be provided before the child is removed except in instances listed in 202.13(1) "a" to "c." The service area manager or designee shall review the propriety of the removal and explain the decision to the foster family.

*c.* The service area manager or designee, on finding that the removal is not in the child's best interests, may overrule the removal decision unless a court order or parental decision prevents the department from doing so.

**ARC 7711B**

## **INSURANCE DIVISION[191]**

### **Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 522B.18, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 10, "Licensing of Insurance Producers," Iowa Administrative Code.

The rules in Chapter 10 set out the requirements, procedures and fees relating to the qualification, licensure and appointment of insurance producers. The purpose of the proposed amendments is to implement electronic delivery of certain notices related to licensing, to eliminate the mailing of paper licenses, and to implement the electronic billing and payment for monthly and renewal appointments. The Division intends that Iowa insurance companies and producers will comply with the rules beginning July 8, 2009.

## INSURANCE DIVISION[191](cont'd)

Any interested person may make written suggestions or comments on these proposed amendments on or before May 4, 2009. Such written materials should be directed to Ann Outka, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on May 4, 2009, at 2 p.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 522B.

The following amendments are proposed.

ITEM 1. Amend rule **191—10.2(522B)**, definitions of “Appointment” and “Producer renewal notice,” as follows:

“*Appointment*” means a notification filed with the division or its designated vendor that an insurer has established an agency relationship with a producer. A company filing such a request must verify that the producer is licensed for the appropriate line(s) of authority.

“*Producer renewal notice*” means ~~a written or~~ an electronic communication issued by the division to inform a producer about license renewal.

ITEM 2. Amend rule 191—10.8(522B) as follows:

**191—10.8(522B) License renewal.**

**10.8(1)** ~~The~~ Upon request by a producer, the division shall send electronically transmit a producer renewal notice to ~~each~~ a licensed producer at the producer’s last-known electronic mail address as it appears in division records. If the division has received notification ~~from the post office~~ that the electronic address of record is no longer valid, no renewal notice will be ~~mailed~~ transmitted.

**10.8(2)** No change.

**10.8(3)** ~~The division may deliver the producer renewal notice electronically. If delivered electronically, the notice will be sent to the last known electronic mail address of record. A producer may submit an electronic mail address to the division as directed by the division.~~

**10.8(4)** and **10.8(5)** No change.

ITEM 3. Amend subrules 10.15(2) and 10.15(4) as follows:

**10.15(2)** ~~Appointments must be filed~~ Insurers shall file and pay for initial appointments using the NIPR Gateway, except that insurers authorized under Iowa Code chapter 518 or 518A shall file appointments directly with the division by arrangement with the division.

**10.15(4)** ~~Appointment fees are set forth in rule 10.26(522B). A billing statement will be submitted to insurance companies on a monthly basis~~ The division or its designee will electronically transmit a billing statement to insurers authorized under Iowa Code chapter 518 or 518A, and payment is due within 45 days. The division will assess a late fee of \$100 for the failure to timely pay appointment billing statements and an additional \$500 on or after the forty-sixth day.

ITEM 4. Amend rule 191—10.16(522B) as follows:

**191—10.16(522B) Appointment renewal.**

**10.16(1)** On or about December 1 of each year, the division ~~shall send~~ or its designee will deliver reminders to insurance companies that appointment renewals are imminent. ~~Such reminders may be delivered electronically.~~ Appointments shall be renewed electronically via the NIPR Gateway at [www.NIPR.com](http://www.NIPR.com).

**10.16(2)** On or about January 2 of each year, ~~the division shall provide~~ a list of the producers currently appointed with each insurance company and a billing statement will be provided to each insurance company via the NIPR Gateway. The billing statement may not be altered, amended or used for appointing or terminating producers.

**10.16(3)** Payment is due ~~at the division~~ on or before March 1 ~~and must include the billing statement.~~

INSURANCE DIVISION[191](cont'd)

**10.16(4)** No change.

~~**10.16(5)** Renewal lists and billing statements are delivered to insurers by electronic means which may include a system administered by the National Association of Insurance Commissioners or its affiliates or subsidiaries. By special arrangement with the division, insurers may complete the appointment renewal process electronically. This may include a system administered by the National Association of Insurance Commissioners or its affiliates or subsidiaries.~~

~~**10.16(6)**~~ **10.16(5)** Insurance companies are required to file the name, address, and electronic address of a contact person for the company, to whom the appointment renewals will be sent. Insurance companies are required to notify the division if a change of the address of such contact occurs. If a company fails to notify the division of such a change of address, the division shall charge the insurance company a \$100 fee.

ITEM 5. Amend subrule 10.18(4) as follows:

**10.18(4)** *License renewal.* ~~The~~ Upon request by a business entity, the division shall ~~mail~~ electronically transmit a renewal notice to the electronic mail address of the business entity on file with the division on or before the first day of the month preceding the renewal month. ~~The renewal notice and~~ renewal fee must be received by the division, or its designated vendor, on or before the license expiration date. ~~By arrangement with the division, renewal notices may be issued and submitted electronically.~~ All ~~nonresident~~ business entities must renew their licenses through the NIPR Gateway or as otherwise directed by the division.

**ARC 7702B**

## **IOWA FINANCE AUTHORITY[265]**

### **Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 17A.3(1)"b," 16.5(1)"r" and 16.91(5), the Iowa Finance Authority proposes to amend Chapter 9, "Title Guaranty Division," Iowa Administrative Code.

This amendment proposes to delete the definition of "title plant" found in subrule 9.7(2). A definition for "title plant" is already contained in Iowa Code section 16.91(5)"a"(2) and in paragraph 9.6(3)"b," rendering any further definitions unnecessary.

The Authority will receive written comments on the proposed amendment until 4:30 p.m. on April 28, 2009. Comments may be addressed to Loyd Ogle, Director, Title Guaranty Division, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Loyd Ogle at (515)725-4901 or E-mailed to [loyd.ogle@iowa.gov](mailto:loyd.ogle@iowa.gov).

There will be a public hearing on April 28, 2009, at 1 p.m. at the Iowa Finance Authority office, at which time persons may present their views either orally or in writing. The Iowa Finance Authority office is located at 2015 Grand Avenue, Des Moines, Iowa.

This amendment is intended to implement Iowa Code sections 16.5(1)"r," 17A.12, 17A.16, and 16.91(5).

The following amendment is proposed.

Rescind the definition of "Title plant" in subrule **9.7(2)**.

**ARC 7701B****IOWA FINANCE AUTHORITY[265]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5(1)"r," the Iowa Finance Authority proposes to amend Chapter 12, "Low-Income Housing Tax Credits," Iowa Administrative Code.

These proposed amendments update and replace the current Low Income Tax Credit Program Compliance Monitoring Manual with an updated compliance monitoring manual, which is incorporated by reference in rule 265—12.3(16).

Copies of the updated compliance monitoring manual, dated January 31, 2009, are available upon request from the Authority and are available electronically on the Authority's Web site at [www.iowafinanceauthority.gov](http://www.iowafinanceauthority.gov). It is the Authority's intent to incorporate the updated compliance monitoring manual by reference consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority's general rules concerning waivers. The compliance monitoring manual is subject to state and federal requirements that cannot be waived. (See Internal Revenue Code Section 42 and Iowa Code section 16.52.)

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on April 28, 2009. Comments may be addressed to Roger Brown, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Roger Brown at (515)725-4901 or E-mailed to [roger.brown@iowa.gov](mailto:roger.brown@iowa.gov).

The Authority anticipates that it may make changes to the updated compliance manual based on comments received from the public.

These amendments were also simultaneously Adopted and Filed Emergency and are published as **ARC 7700B** herein. The purpose of the Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code sections 16.4(3) and 16.52, Internal Revenue Code Section 42, and the Housing and Economic Recovery Act of 2008.

**ARC 7696B****LABOR SERVICES DIVISION[875]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby gives Notice of Intended Action to rescind Chapter 71, "Administration," and adopt new Chapter 71, "Administration of the Conveyance Safety Program"; to amend Chapter 72, "New Installations," and

## LABOR SERVICES DIVISION[875](cont'd)

Chapter 73, “Existing Conveyances”; and to rescind Chapter 75, “Fees,” and Chapter 76, “Permits,” Iowa Administrative Code.

These amendments rescind unnecessary and obsolete provisions; reorganize many existing rules; significantly change the rules governing safety tests; adopt a procedure to verify that hazards have been corrected without the need for reinspection in some cases; allow a controller upgrade permit in certain, narrowly defined circumstances; make technical and editorial corrections; establish rules for the extension of installation and alteration permits; adopt new provisions for the inspection of moving walks and escalators; increase the fees for inspection of moving walks and escalators; and change the rules concerning inspection scheduling.

The purposes of these amendments are to protect the safety of the public, facilitate the upgrading of older elevator controls, make more efficient use of inspectors’ time, make the rules more current and easier to read, enhance conveyance safety by improving inspection and safety test procedures, align the language concerning inspection scheduling with the statutory authority, and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on April 28, 2009, a public hearing will be held on April 29, 2009, at 1:30 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than April 29, 2009, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

These amendments are intended to implement Iowa Code chapter 89A.

The following amendments are proposed.

ITEM 1. Rescind 875—Chapter 71 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 71

## ADMINISTRATION OF THE CONVEYANCE SAFETY PROGRAM

**875—71.1(89A) Definitions.** The definitions contained in this rule shall apply to 875—Chapters 71, 72, and 73.

“*AECO*” means an elevator/escalator certification organization accredited pursuant to ASME A17.7.

“*Approved*” means approved by the division.

“*CCD*” means code compliance documentation as described in ASME A17.7, Section 2.10.

“*CEI*” means a person who is a certified elevator inspector or a certified elevator inspector supervisor pursuant to ASME QEI-1-2007.

“*Control*” means the system governing the starting, stopping, direction of motion, acceleration, speed and deceleration of the moving member.

“*Conveyance*” means any elevator, escalator, dumbwaiter, wind tower lift, CPH, or other equipment governed by Iowa Code chapter 89A.

“*CPH*” means a construction personnel hoist.

“*CPH extension*” means the act or process of increasing the range of travel for a CPH.

“*Division*” means the labor services division of the workforce development department.

“*Elevator*” means a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction and which serves two or more floors of a building or structure. “Elevator” does not include a CPH.

“*Elevator mechanic*” means a person who meets the standard for “elevator personnel” found in ASME A17.1.

“*Hoistway-unit system*” means a series of hoistway-door interlocks, hoistway-door electric contacts or hoistway-door combination mechanical locks and electric contacts, or a combination thereof, the

## LABOR SERVICES DIVISION[875](cont'd)

function of which is to prevent operation of the driving machine by the normal operating device unless all hoistway doors are in the closed position and, if required, locked.

*“Major alteration”* means an alteration for which rule 71.10(89A) requires that the entire conveyance comply with current codes.

*“Wind tower lift”* means a conveyance designed and utilized solely for movement of trained and authorized people and small loads in wind towers built for the production of electricity.

**875—71.2(89A) Registration of conveyances.** The owner or authorized agent of each operable conveyance not previously registered shall register the conveyance. An application to install a new conveyance shall constitute registration. All registrations shall be submitted to the commissioner on forms available from the division of labor services and shall include all information requested by the labor commissioner.

**875—71.3(89A) State identification number.** The commissioner shall assign an identification number to each conveyance that shall be stamped on a metal tag permanently attached to the controller, to the electrical disconnecting switch, or in a wind tower lift cage.

**875—71.4(89A) Responsibility for obtaining permits.** The procuring of all permits and the payment of all fees required by this chapter shall be the responsibility of the owner. Failure to obtain the appropriate permit prior to installation, alteration or operation may, at the discretion of the labor commissioner, result in a referral to the attorney general for prosecution of criminal penalties as described in Iowa Code section 89A.17.

**875—71.5(89A) Installation permits.**

**71.5(1)** Installation shall not begin until an installation permit has been issued by the division. A separate installation permit shall be issued for each conveyance, except that a single installation permit shall cover all identical wind tower lifts installed as the result of one construction contract in identical wind towers in a single wind farm.

**71.5(2)** Application for an installation permit shall be accompanied by the fee specified in rule 71.16(89A), shall be in the format required by the labor commissioner, and shall include the following, as applicable:

- a. Sectional plan of car and hoistway.
- b. Sectional plan of machine room.
- c. Sectional elevation of hoistway and machine room including the pit, bottom and top clearance of car and counterweights.
- d. Size and weight of rails and guide rail bracket spacing.
- e. The estimated maximum vertical forces on the guide rails on application of the safety device.
- f. In the case of freight elevators for class B or class C loading, the horizontal forces on the guide rail faces during loading and unloading and the estimated maximum horizontal forces in a post-wise direction on the guide rail faces on the application of the safety device.
- g. The size and weight per foot of any rail reinforcements where rail reinforcements are provided.
- h. Job specifications.
- i. For a conveyance covered by ASME A17.7, a complete copy of the CCD with attachments and a complete copy of the Certificate of Conformance with attachments as described by ASME A17.7, Appendix I, Section 4.5.
- j. For a CPH, the number of CPH extensions planned, the planned dates for each CPH extension, and the number of new floors anticipated with each CPH extension.

**71.5(3)** A CPH installation permit issued in response to an application submitted in full compliance with this subrule permits each planned CPH extension. Each CPH extension shall be considered an alteration. The fee submitted for a CPH installation permit shall be the total of the CPH installation permit fee as set forth in subrule 71.16(3) and the CPH alteration permit fee as set forth in subrule 71.16(4).

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**71.5(4)** Issuance of an installation permit shall not be construed as a waiver or variance of any requirement of law.

**71.5(5)** The installation permit or a copy of the installation permit shall be conspicuously posted at the worksite. All the wind towers covered by a single installation permit shall be considered a single worksite, and posting one copy of the installation permit at the construction project office shall be sufficient compliance with this subrule.

**71.5(6)** Except as described in paragraphs 71.5(6) "a" and "b," the installation permit shall expire upon the earlier of the completion of the installation as described in the permit application or one year after issuance.

*a.* For a CPH, the installation permit shall expire upon completion of the last CPH extension.

*b.* For any conveyance, during the tenth month after issuance, and upon submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension may be granted at the discretion of the labor commissioner.

**875—71.6(89A) Construction permits.** A construction permit authorizes the temporary, limited use of an elevator for purposes relating to construction or demolition.

**71.6(1)** Use of the elevator shall not begin until a construction permit has been issued by the division.

**71.6(2)** Application for a construction permit shall be in the format required by the labor commissioner and must include all the information requested by the labor commissioner and the fee specified by this chapter.

**71.6(3)** Upon submission of the completed application and fee, a state inspector shall be scheduled to inspect the elevator. Construction permits shall be issued only if the following criteria are met:

*a.* The elevator has been successfully tested pursuant to the requirements of ASME A17.1, Section 8.11.5.13; and

*b.* The applicable requirements of ASME A17.1, Section 5.10, are met.

**71.6(4)** The construction permit or a copy of the construction permit shall be posted conspicuously in a protective sleeve in the elevator car.

**71.6(5)** The construction permit shall expire 120 days after issuance. However, between 90 and 110 days after issuance and upon submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension of up to 90 days may be granted at the discretion of the labor commissioner.

**71.6(6)** Elevators with a construction permit but without an operating permit shall not be accessible to the general public.

**71.6(7)** Failure to comply with these provisions may result in the revocation of the construction permit.

**71.6(8)** An operating permit shall not be issued before construction and an acceptance inspection are complete.

**875—71.7(89A) Operating permits.**

**71.7(1)** Operation of equipment covered by this chapter without a current operating permit is prohibited, except as authorized by rules 71.6(89A) and 71.8(89A).

**71.7(2)** Operating permits shall not be issued prior to successful completion of an inspection pursuant to rule 71.11(89A) and payment of all permit and inspection fees owed to the division.

**71.7(3)** Current operating permits or copies of current operating permits shall be conspicuously displayed as follows:

*a.* The operating permit for an elevator or CPH shall be posted in the car.

*b.* The operating permit for an escalator, dumbwaiter, wind tower lift, moving walk, or wheelchair lift shall be posted on or near the subject conveyance.

**71.7(4)** An operating permit shall expire 60 days after the first permit renewal inspection following the issuance of the operating permit, unless an earlier date is dictated by this rule.

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**71.7(5)** An operating permit is automatically suspended when construction is initiated to alter less than or equal to 50 percent of an elevator as calculated pursuant to rule 71.9(89A). The operating permit automatically resumes when the elevator passes an inspection pursuant to rule 71.11(89A).

**71.7(6)** An operating permit is automatically terminated when a major alteration is initiated on the conveyance. A new operating permit shall be issued upon successful completion of the major alteration and acceptance inspection.

**71.7(7)** An operating permit is automatically terminated when an imminent danger notice is posted on the conveyance.

**71.7(8)** Notwithstanding other provisions of this rule, at the discretion of the labor commissioner, a temporary operating permit may be issued for up to 30 days provided the inspection has been completed and no code violations were identified. Issuance of a temporary operating permit does not extend the expiration date of the conveyance's operating permit.

**875—71.8(89A) Controller upgrade permits.** A controller upgrade permit may be issued to allow operation of an elevator while work to upgrade controls requires deactivation of the Phase I recall initiated by smoke sensing devices. Each elevator to be altered requires a separate controller upgrade permit. The duration of a controller upgrade permit shall not exceed 90 days. Each elevator in the group shall pass inspection pursuant to rule 71.11(89A) prior to being placed back into service.

**71.8(1)** A controller upgrade permit shall not be issued unless each of the following conditions is met:

- a. Two or more elevators share a lobby at the level of the recall floor.
- b. The project includes the installation of new elevator controllers in all of the elevators in the group.
- c. Phase I fire recall initiated by a key-operated switch and all other controls shall be properly functioning for each elevator available for use.
- d. There is a current alteration permit for the project.
- e. A complete application for the controller upgrade permit and the fee established by this chapter have been submitted and accepted.

**71.8(2)** A controller upgrade permit shall not be construed to waive or excuse compliance with the requirements of any other governmental entity, including the department of public safety.

**71.8(3)** Upon the submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension of the permit for up to 60 days may be granted.

**875—71.9(89A) Alteration permits.**

**71.9(1)** Alteration shall not begin until an alteration permit has been issued by the division.

**71.9(2)** Application for an alteration permit shall be in the format required by the labor commissioner and shall include drawings and specifications of all planned changes and the fee specified by rule 71.16(89A).

**71.9(3)** Issuance of an alteration permit shall not be construed as a waiver or variance of any requirement of law.

**71.9(4)** The alteration permit or a copy of the alteration permit shall be conspicuously posted at the worksite.

**71.9(5)** If a complete installation permit application was submitted for a CPH pursuant to subrule 71.5(3), at least seven days' advance notice of each CPH extension shall be provided to the labor commissioner. For a CPH installed without an installation permit prior to July 1, 2008, a completed alteration permit application shall be submitted to the labor commissioner at least seven days before each CPH extension.

**71.9(6)** The alteration permit shall expire upon the earlier of the completion of the alteration as described in the permit application or 120 days after issuance. However, between 90 and 110 days after issuance and upon submission to the labor commissioner of sufficient justification and other

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required information, an extension of the alteration permit may be granted at the discretion of the labor commissioner.

**875—71.10(89A) Alterations.** Alterations or changes shall comply with rule 875—72.13(89A) or rule 875—73.8(89A), as applicable. A conveyance that is relocated shall be brought into compliance with all codes that are applicable at the time of relocation.

**71.10(1) Elevators.** When any combination of alterations or changes is made that constitutes more than 50 percent of the elevator, the entire elevator shall be brought into compliance with ASME A17.1-2007/CSA B44-07, and it shall be deemed a new elevator.

*a.* Alterations or changes constitute more than 50 percent of the construction if they exceed 50 percent of the total points according to the following table:

<b>Elevator Component</b>	<b>Hydraulic</b>	<b>Traction</b>
Controller	31	26
Floor selector	4	8
Drive-MG-SCR	-	13
Main machine	-	15
Machine motor	5	7
Hoist ropes	4	8
Governor	4	7
Platform	9	9
Car fixtures	9	8
Cab	10	10
Safeties	6	7
Door operator	12	12
Hoistway door panels	11	10
Hoistway door frames	11	10
Hoistway hangers & tracks	11	11
Hoistway door locks	8	9
Traveling cable	6	9
Hoistway wiring	8	6
Hall fixtures	8	10
Buffers	6	6
Counterweight	4	7
Rails & brackets	10	18
Car & counterweight guides	6	6
Pump	9	-
Valve	9	-
Tank	9	-
Plunger	14	-
Cylinder	18	-
<b>Total Points</b>	<b>242</b>	<b>232</b>

*b.* If an elevator does not have one or more of the components in the chart above, and those components will not be added to the elevator during the alteration, the points for the component(s) shall be subtracted from the total points before a determination is made about whether the alteration or change constitutes 50 percent.

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**71.10(2) Conveyances other than elevators.** With the exception of replacing brushes on or adding brushes to escalators, all alterations of conveyances other than elevators shall require that the entire conveyance be brought into compliance with the current code.

**875—71.11(89A) Inspections.** Pursuant to Iowa Code section 89A.12, inspections by the labor commissioner's designee shall be permitted at reasonable times with or without prior notice.

**71.11(1) Scope of inspections.**

*a. Comprehensive.* Periodic inspections shall be comprehensive. Conveyances subjected to major alterations, elevators being transferred from construction permits to operating permits, previously dormant conveyances being returned to service, relocated conveyances, and new conveyances shall be inspected in their entirety prior to operation.

*b. Limited.* The scope of an inspection after an alteration other than a major alteration shall be determined by rule 875—72.13(89A) or 875—73.8(89A), as applicable. However, if the inspector notices a safety hazard in plain view outside the altered components, or if the periodic inspection is due, the entire conveyance shall be inspected.

**71.11(2) When inspections will occur.**

*a. Periodic inspections.*

(1) Conveyance inspections by state inspectors shall be conducted annually unless the labor commissioner determines resources do not allow annual inspections. If the labor commissioner determines annual inspections of state-inspected conveyances are not feasible due to insufficient resources, the labor commissioner shall determine the inspection schedule.

(2) Conveyance inspections by special inspectors shall be conducted at least annually.

*b. Acceptance inspections.* An acceptance inspection shall occur:

- (1) After each relocation,
- (2) After each alteration,
- (3) After each installation,
- (4) Before an elevator subject to a construction permit receives an operating permit, and
- (5) Before a previously dormant conveyance is returned to service.

*c. Other inspections.* Inspections may be made when the commissioner reasonably believes that a conveyance is not in compliance with the rules. Accidents, complaints, or requests for consultative inspections may result in inspections by the labor commissioner's designee.

**71.11(3) Who may perform inspections.**

*a.* The labor commissioner's designee shall inspect altered conveyances, previously dormant conveyances being returned to service, wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A), relocated conveyances, and new conveyances.

*b.* Except as noted in 71.11(3) "c," annual inspections may be performed by state inspectors or special inspectors authorized by the labor commissioner pursuant to rule 71.12(89A).

*c.* An inspection report by a special inspector shall not be accepted as the required, annual inspection if the conveyance is under contract for maintenance, installation or alteration by the special inspector or the special inspector's employer, or if the property is owned or leased by the special inspector or the special inspector's employer.

**71.11(4) Inspection standards.** Inspections shall be performed in accordance with applicable safety codes or documents such as:

*a.* CCD;

*b.* ASME A17.1, Sections 8.10 and 8.11, except Section 8.11.1.1;

*c.* ANSI A10.4-2007;

*d.* Rule 875—72.12(89A) for wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A); or

*e.* ASME A18.1.

**71.11(5) Inspection reports.**

*a.* All inspectors shall file inspection reports on forms approved by the commissioner within 30 days from the date of inspection and shall provide owners of conveyances with copies of completed

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inspection reports. The inspection report must separately list each unsafe condition and the applicable, specific code citation. Up to 30 days shall be allowed for correction of the unsafe conditions.

*b.* The owner may file a petition for reconsideration of an inspection report pursuant to 875—Chapter 69. The timely and proper filing of a petition for reconsideration extends the deadline for correction of the hazards that are subject to the petition for reconsideration.

**71.11(6) Extension of time.** The owner may petition the commissioner for up to 60 additional days to make the necessary corrections. The time frames set forth in subrule 71.11(7) may be adjusted by the labor commissioner as necessary to accommodate an extension of time.

**71.11(7) Correction of unsafe conditions.** In the absence of a determination on reconsideration or appeal that correction of hazards is not required, all unsafe conditions identified in the inspection report shall be corrected. The labor commissioner shall verify correction of all unsafe conditions identified in the inspection report by sending a state inspector to reinspect the conveyance for the fee set forth in rule 71.16(89A), or by reviewing appropriate documentation such as a photograph, invoice, other verifiable document, or subsequent inspection report. The time frames set forth in this subrule may be accelerated at the request of the owner.

*a.* Promptly upon receipt of an inspection report listing unsafe conditions, the labor commissioner will send to the owner and the special inspector, if any, an abatement order. A copy of the inspection report shall be attached to the abatement order. Unless a special inspector conducted the inspection, the order may specify a period that ends no more than 45 days after the inspection during which the owner may submit written evidence that the unsafe conditions have been corrected. The abatement order shall:

- (1) Identify the equipment.
- (2) Demand that the unsafe conditions be corrected within the period set forth in the inspection report.

- (3) Set forth the consequences of failure to comply.

*b.* After the period specified on the inspection report has passed, the labor commissioner may cause a state inspector to verify correction of all unsafe conditions. If reinspection reveals no significant progress toward correcting the unsafe conditions, or the remaining unsafe conditions create significant safety concerns, the labor commissioner may serve a notice of intent to suspend, deny or revoke the operating permit.

*c.* The labor commissioner may issue an operating permit after receipt of the appropriate fee and verification that each unsafe condition identified in the inspection report has been corrected.

*d.* If written proof of correction was requested in the abatement order, but adequate proof was not received by the deadline set forth in the abatement order, the labor commissioner may send a second abatement order or cause a state inspector to inspect the conveyance. If the labor commissioner elects to send a second abatement order, it shall notify the owner that, if written proof of abatement is not received within 20 days, a state inspector may be sent to the site. Copies of the abatement order and the inspection report shall be attached to the second abatement order.

*e.* If a special inspector conducted the inspection, more than 45 days have passed since the deadline for correction of hazards, and an inspection report indicating the hazards are corrected has not been filed, the labor commissioner may contact the special inspector, send a second abatement order to the owner, or send a state inspector to inspect the conveyance. Copies of the abatement order and the inspection report shall be attached to a second abatement order.

*f.* If an inspection as described in paragraph 71.11(7) “*d*” or “*e*” reveals no significant progress toward correcting the unsafe conditions, and the remaining unsafe conditions create no significant safety concerns, the labor commissioner may extend the time for abatement of the unsafe conditions an additional 10 days or may serve a notice of intent to suspend, deny or revoke the operating permit. The labor commissioner may also post a notice prohibiting use of the conveyance pending abatement of the unsafe conditions listed in the inspection report.

*g.* Procedures for appeal of a notice of intent to suspend, deny or revoke an operating permit are set forth in 875—Chapter 69.

**71.11(8) Imminent danger.** If the labor commissioner determines that continued operation of a conveyance pending correction of unsafe conditions creates an imminent danger, the labor commissioner

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shall post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance contrary to posted notice by the labor commissioner may result in additional legal proceedings pursuant to Iowa Code section 89A.10(3) or 89A.18. The conveyance may be returned to service only after the imminent danger has been corrected and the conveyance has passed a comprehensive inspection.

**71.11(9) *Interference prohibited.*** No person shall interfere with, delay or impede an inspector employed by the state during an inspection.

**875—71.12(89A)** Reserved.

**875—71.13(89A) State employees.** ASME A17.1, Rule 8.11.1.1, shall not apply to inspectors who were hired before January 2005 and are state employees.

**875—71.14(89A) Safety tests.** Only safety test reports submitted on approved forms from elevator mechanics who are employed by authorized companies shall be considered to meet the requirements of this rule.

**71.14(1) *When safety tests will be performed.***

a. Safety tests shall be performed on new and altered installations before they are placed in service.  
b. Annual, three-year, and five-year safety tests shall be made on all conveyances pursuant to the schedules and procedures set forth in:

(1) The maintenance control plan for wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A);

(2) The CCD for conveyances covered by ASME A17.7-2007/CSA B44-07;

(3) ASME A17.1-2007/CSA B44-07, Part 8, (except for Rule 8.11.1.1);

(4) ASME A18.1(2003), Part 10; or

(5) ANSI A10.4-2007, Section 26.4.

**71.14(2) *How safety tests will be reported.*** Within 30 days after completion of a safety test, the elevator mechanic shall file with the labor commissioner a report on an approved form and shall provide a copy of the form to the owner and to the witness, if applicable.

**71.14(3) *How safety tests will be recorded.*** The elevator mechanic shall attach a tag showing the date of the test, the elevator mechanic's name, and the type of test performed.

a. On electric traction elevators, the elevator mechanic shall attach the tag to the safety-releasing carrier.

b. On hydraulic elevators, the elevator mechanic shall attach the tag to the disconnecting switch or the controller.

c. On wheelchair lifts, the elevator mechanic shall attach the tag to the disconnecting switch.

d. On other conveyances covered by these rules, the commissioner's designee witnessing the acceptance safety test shall indicate the proper location of the tag. Subsequent test tags shall be attached in the same location.

**875—71.15(89A) Authorized companies.**

**71.15(1)** Each year, authorized companies shall train their elevator mechanics who perform safety tests on safety test procedures.

**71.15(2)** For each conveyance owned by an authorized company, the owner shall obtain the services of a CEI who is not employed by the authorized company or an inspector employed by the state to witness the safety test.

**71.15(3)** To become authorized to perform safety tests, a company shall submit a copy of its procedures for performing safety tests. The labor commissioner shall review the procedures for adequacy and shall request modifications to the procedures or grant or deny the authorization.

**71.15(4)** Every five years or within six months after the board adopts a new edition of ASME, whichever is earlier, authorized companies shall submit revised safety test procedures for renewal of authorization. The labor commissioner shall review the procedures for adequacy and shall request modifications to the procedures or grant or deny the authorization.

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**71.15(5) Investigations.** Investigations shall take place at the times and in the places the labor commissioner directs. The labor commissioner may investigate for any reasonable cause. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice.

**71.15(6) Suspension.** If the labor commissioner determines that a falsified safety test report was submitted by an elevator mechanic, the labor commissioner shall suspend the authorization of the elevator mechanic's employer for six months. During the suspension, all safety tests performed by any employee of the authorized company shall be witnessed by a state inspector or a CEI who is not employed by the suspended authorized company.

**71.15(7) Suspension procedures.**

*a.* The labor commissioner shall notify an authorized company of its suspension by certified mail or by other service as permitted by Iowa Code chapter 17A.

*b.* The authorized company shall have 20 days to file a written notice of contest with the labor commissioner. If the authorized company does not file a written notice of contest in a timely manner, the suspension shall automatically be effective. If the authorized company does file a written notice of contest in a timely manner, the hearing procedures in 875—Chapter 1 shall govern.

*c.* If the labor commissioner finds, pursuant to Iowa Code section 17A.18A, that public health, safety or welfare imperatively requires emergency action, the authorization may be summarily suspended.

**875—71.16(89A) Fees.** Except as noted below, all fees are nonrefundable and due in advance.

**71.16(1) Operating permits.** The annual operating permit fee shall be \$50 per conveyance.

**71.16(2) Annual inspections.** Fees shall be remitted to the division of labor services within 30 days of the date of inspection. The fees for annual inspections shall be as follows:

*a.* Elevators (except wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A), television tower elevators and hand-powered elevators): \$75.

*b.* Escalators: \$75.

*c.* Moving walks: \$75.

*d.* Dumbwaiters: \$60.

*e.* Hand-powered elevators: \$60.

*f.* Wheelchair lifts: \$60.

*g.* Television tower elevators: \$300.

*h.* Wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A): \$150.

*i.* CPHs: \$300

**71.16(3) Installation permits.** The fees in this subrule cover the initial print review, installation permit, initial inspection and first-year operating permit. Each print revision submitted to the division shall be subject to an additional fee of \$50. The fees for new installations shall be as follows:

*a.* Elevators (except wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A)) and CPHs up to and including four landings: \$500.

*b.* Elevators (except wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A)) and CPHs with five or more landings: \$600.

*c.* Escalators: \$500.

*d.* Moving walks: \$500.

*e.* Dumbwaiters: \$350.

*f.* Wheelchair lifts: \$350.

*g.* Wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A): \$250 per lift.

**71.16(4) Alteration permits.**

*a.* The fees in paragraph 71.16(4) "b" cover the initial print review, alteration permit, and initial inspection for all objects except CPHs. For major alterations, the new operating permit fee is also included in the fee set forth in this subrule.

*b.* The table in rule 71.10(89A) shall be used to determine the change percentage for elevator alterations. The fees for elevator alterations shall be as follows:

## LABOR SERVICES DIVISION[875](cont'd)

- (1) For alterations up to and including 25 percent: \$200.
- (2) For alterations of 26 percent up to and including 50 percent: \$400.
- (3) For alterations over 50 percent, the fees for new installations shall apply.
  - c. For all conveyances other than elevators, the fees for new installations shall apply to alterations.
  - d. For each CPH installed after July 1, 2008, the fee for each CPH extension shall be \$150.

The total fee required for all planned CPH extensions shall be submitted with the installation permit application pursuant to subrule 71.5(3).

e. For CPHs installed prior to July 1, 2008, and extended to additional floors on or after July 1, 2008, the combined fee for the alteration inspection and alteration permit shall be \$150.

**71.16(5) Construction permits.** The construction permit fee shall be \$100 per conveyance. This fee includes the fee for initial inspection.

**71.16(6) Controller upgrade permits.** The controller upgrade permit fee shall be \$200. This fee includes one inspection.

**71.16(7) Consultative inspections.** Consultative inspections may be performed at the discretion of the labor commissioner.

a. The consultative fee for each wind tower lift exempted from ASME A17.1 by rule 875—72.12(89A) shall be \$150.

b. The consultative fee for each CPH shall be \$300.

c. The consultative fee for each tower elevator shall be \$300.

d. The consultative fee for all other conveyances shall be \$100 per hour, including travel time, with a minimum charge of \$200.

**71.16(8) Special inspector commission.** The special inspector commission fee shall be \$60 annually.

**71.16(9) Witnessing safety tests.** The fee for division employees to witness safety tests shall be \$100 per hour, including travel time, with a minimum charge of \$200.

**71.16(10) Permit extensions.** The fee to extend an installation permit, alteration permit, or construction permit shall be \$50.

**71.16(11) Inspections outside of normal business hours.** Inspections outside the normal business hours may be performed at the discretion of the labor commissioner. If the owner or contractor requests an inspection outside of normal business hours and the labor commissioner agrees to the schedule, an additional fee will be charged. The additional fee will be calculated at a rate of \$100 per hour, including travel time, with a minimum charge of \$200.

**71.16(12) Reinspections.** The fees for reinspections are \$300 for television tower elevators and CPHs, \$150 for wind tower lifts, and \$200 for all other conveyances.

**875—71.17(89A) Publications available for review.** Standards, codes, and publications adopted by reference in these rules are available for review in the office of the Division of Labor Services, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

**875—71.18(89A) Other regulations affecting elevators.** Regulations concerning accessibility of buildings and conveyances available to the public are found at 661—Chapter 302. Regulations governing the safety and health of employees who work in and around elevators are found at 875—Chapters 2 to 26. Iowa Code chapter 91C and 875—Chapter 150 apply to companies that alter and install conveyances. No rule in 875—Chapters 71 to 73 shall be interpreted as creating an exemption, waiver, or variance from any otherwise applicable regulation or statute.

**875—71.19(89A) Accidents.**

**71.19(1) Reporting the accident.** The owner shall immediately notify the commissioner of each personal injury accident requiring the service of a physician or causing disability exceeding one day or causing damage to the conveyance exceeding \$2,000. Notification shall be in writing and shall include the state identification number, owner, and description of accident.

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**71.19(2)** *Securing the accident site pending investigation.* The removal of any part of the damaged conveyance or operating mechanism from the premises is forbidden until permission to do so is granted by the commissioner.

**71.19(3)** *Putting the conveyance back into operation.* When an accident involves the failure or destruction of any part of the conveyance or its operating mechanism, the use of the conveyance is forbidden until it has been made safe, until it has been reinspected, and until any repairs or alterations have been approved by the commissioner.

These rules are intended to implement Iowa Code chapters 89A, 252J, 261 and 272D.

ITEM 2. Amend **875—Chapter 72**, title, as follows:

~~NEW INSTALLATIONS~~ CONVEYANCES INSTALLED ON OR AFTER JANUARY 1, 1975

ITEM 3. Rescind rule 875—72.1(89A) and adopt the following **new** rule in lieu thereof:

**875—72.1(89A) Purpose and scope.** This chapter contains safety standards covering the design, construction, installation, operation, inspection, testing, maintenance, alteration and repair of conveyances installed on or after January 1, 1975. The rules of this chapter also apply to previously dormant conveyances that are being reactivated, and to reinstalled or moved conveyances. As used in this rule, the word “installation” refers to the date on which a conveyance contractor enters into a contractual agreement pertaining to a conveyance.

**72.1(1)** For installations between January 1, 1975, and December 31, 1982, ANSI A17.1 shall mean ANSI A17.1 (1971).

**72.1(2)** For installations between January 1, 1983, and December 31, 1992:

- a. ANSI A17.1 shall mean ANSI A17.1 (1981); and
- b. ANSI A117.1 shall mean ANSI A117.1 (1980).

**72.1(3)** For installations between January 1, 1993, and December 31, 2000:

- a. ASME A17.1 shall mean ASME A17.1 (1990);
- b. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (1990); and
- c. ANSI A117.1 shall mean ANSI A117.1 (1980).

**72.1(4)** For installations between January 1, 2001, and December 31, 2003:

- a. ASME A17.1 shall mean ASME A17.1 (1996 through the 1999 addenda);
- b. ASME A18.1 shall mean ASME A18.1 (1999), except Chapters 4, 5, 6, and 7;
- c. ANSI A117.1 shall mean ANSI A117.1 (1998); and
- d. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (1999).

**72.1(5)** For installations between January 1, 2004, and April 4, 2006:

- a. ASME A17.1 shall mean ASME A17.1 (2000 through the 2003 addenda);
- b. ASME A18.1 shall mean ASME A18.1 (1999 through the 2001 addenda), except Chapters 4, 5, 6, and 7;
- c. ANSI A117.1 shall mean ANSI A117.1 (1998); and
- d. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2002).

**72.1(6)** For installations between April 5, 2006, and July 22, 2008:

- a. ASME A17.1 shall mean ASME A17.1-2004, A17.1a-2005 and A17.1S-2005;
- b. ASME A18.1 shall mean ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;
- c. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and
- d. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2005).

**72.1(7)** For installations on or after July 23, 2008:

- a. ASME A17.1 shall mean ASME A17.1-2007/CSA B44-07;
- b. ASME A17.7 shall mean ASME A17.7-2007/CSA B44-07;
- c. ASME A18.1 shall mean ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;
- d. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and
- e. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2005).

## LABOR SERVICES DIVISION[875](cont'd)

ITEM 4. Amend rule 875—72.2(89A) as follows:

**875—72.2(89A) Definitions.** The definitions contained in ~~Part 1 of ASME A17.1, Part 1 of ASME A18.1, and Chapter 1 of ANSI A117.1,~~ and any other standard adopted herein by reference shall be applicable as used in this chapter to the extent that ~~they~~ the definitions do not conflict with the definitions contained in Iowa Code chapter 89A and these rules. However, the definition of “building code” in ASME A17.1 is modified to exclude the Building Construction and Safety Code (NFPA 5000) and the National Building Code of Canada (NBCC) for any installation after March 1, 2008.

ITEM 5. Rescind and reserve rule **875—72.11(89A)**.

ITEM 6. Adopt the following **new** rule 875—72.13(89A):

**875—72.13(89A) Alterations, repairs, replacements and maintenance.**

**72.13(1) General.** All maintenance, repairs, replacements, and alterations shall comply with ASME A17.1-2007/CSA B44-07 or ASME A17.7-2007/CSA B44-07, as applicable, except as noted in 875—subrules 73.8(3) and 73.8(4). Rule 875—71.10(89A) describes alterations which require that the entire conveyance be brought into compliance with the most current codes.

**72.13(2) Exemption for button renumbering.** All maintenance, repairs and alterations to devices covered by ANSI A117.1 shall comply with ANSI A117.1 (2003), except for Rule 407.4.6.2.2.

**72.13(3) Sump pump exemption.** The provisions of ASME A17.1-2007/CSA B44-07 and ASME A17.1S-2005, Rule 2.2.2, that require a pit sump or drain shall not apply to an elevator alteration when all of the following criteria are met:

- a. No other code or rule requires that the pit be excavated or lowered.
- b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.
- c. There is evidence that groundwater has not entered the pit previously.
- d. The location and geology of the building indicate a likelihood that groundwater would enter the pit if the foundation or pit floor were breached to install the pit sump or drain.
- e. A description of alternative means to maintain the pit in a dry condition is provided to the labor commissioner with the alteration permit application.
- f. The labor commissioner approves the alternative means to maintain the pit in a dry condition.
- g. The alternative means to maintain the pit in a dry condition are installed or implemented as described in the alteration permit application.

**72.13(4) Pit excavation exemption.** The full length of the platform guard set forth in ASME A17.1-2007/CSA B44-07 and ASME A17.1S-2005, Rule 2.15.9.2(a), shall not be required if all of the following criteria are met:

- a. No other code or rule requires that the pit be excavated or lowered.
- b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.
- c. A full-length platform guard would strike the pit floor when the elevator is on its fully compressed buffer.
- d. The clearance between the bottom of the platform guard and the pit floor is 2.5 centimeters (1 inch) when the elevator is on its fully compressed buffer.

**72.13(5) Sprinkler retrofits and shunt trip breakers.** When a sprinkler is added to a hoistway or machine room, the conveyance shall comply with the following:

- a. The installation shall comply with the applicable version of ASME A17.1, Rule 2.8.3.3.
- b. The elevator controls shall be arranged to comply with the phase I fire recall provisions of the applicable version of ASME A17.1, Rule 2.27.3.
- c. The applicable version of ASME A17.1 shall be determined by reference to rule 875—72.1(89A). For purposes of rule 875—72.13(89A), the relevant subrule of 875—72.1(89A) shall apply based on the date the sprinkler is installed instead of the date the conveyance was installed.

## LABOR SERVICES DIVISION[875](cont'd)

ITEM 7. Amend **875—Chapter 73**, title, as follows:

~~EXISTING CONVEYANCES INSTALLED PRIOR TO JANUARY 1, 1975~~

ITEM 8. Rescind rule 875—73.1(89A) and adopt the following **new** rule in lieu thereof:

**875—73.1(89A) Scope and definitions.**

**73.1(1)** This chapter establishes minimum safety standards for all conveyances installed prior to January 1, 1975, except material lift elevators. Conveyances installed on or after January 1, 1975, shall conform with the requirements set forth in 875—Chapter 72. Material lift elevators installed prior to January 1, 1975, are not subject to regulation pursuant to Iowa Code section 89A.2.

**73.1(2)** The definitions contained in ASME (1971) shall be applicable as used in this chapter to the extent that they do not conflict with the definitions contained in Iowa Code chapter 89A or 875—Chapter 71.

ITEM 9. Amend subrule 73.2(4) as follows:

**73.2(4)** Where freight elevator hoistway doors or gates are of open or lattice construction, they shall be at least 6 feet high and shall come within 2 inches of the floor when closed. Gates shall be constructed as to reject a ball 2 inches in diameter. ~~They shall withstand a force of~~ Doors and gates must be able to withstand 250 pounds of pressure applied in the center of the door or gate without breaking or forcing it out of its being forced out of their guides.

ITEM 10. Amend subrule 73.2(8) as follows:

**73.2(8)** All hoistway-door interlocks shall ~~be of the~~ function as part of a hoistway-unit type system.

ITEM 11. Amend subrule 73.2(15) as follows:

**73.2(15)** ~~Except where vertical opening biparting doors are provided, all~~ All elevators provided with that have automatic leveling, inching or teasing devices and where the that are configured with landing sills that project into the hoistway, shall be equipped with a bevel on the underside of the landing sill or the underside of projections found on the bottom section of vertically opening biparting doors. Bevels shall be constructed of smooth concrete or not less than 16-gauge metal securely fastened to the hoistway entrance. Bevels shall extend the full depth of the leveling zone plus 3 inches.

ITEM 12. Amend subrules 73.3(3) and 73.3(4) as follows:

**73.3(3)** Passenger car enclosure tops shall have an emergency exit with cover. Opening size shall be as set forth in ANSI A17.1, 1971, Rule 204.1E, ~~or later editions of the ASME A17.1 code.~~ EXCEPTION: Hydraulic elevators provided with a manual lowering valve are not required to provide an emergency exit.

**73.3(4)** Each passenger car shall have a door or gate at each entrance. Doors or gates shall be of the horizontally sliding type. Doors shall be of solid construction. Gates shall be of the collapsible type. Gates and doors shall conform to ANSI A17.1, 1971, Rule 204.4, ~~or later editions of the ASME A17.1 code.~~

ITEM 13. Amend subrule 73.3(7) as follows:

**73.3(7) Car door or gate closing force.**

a. Where a car door or gate of an automatic or continuous-pressure operation passenger elevator is closed by power, or is of the automatically released self-closing type, and faces a manually operated or self-closing hoistway door, the closing of the car door or gate shall not be initiated unless the hoistway door is in the closed position; ~~and the~~ The closing mechanism shall be so designed that the force necessary to prevent closing of a horizontally sliding car door or gate from rest shall be not more than 30 pounds.

b. ~~EXCEPTION: Where~~ Paragraph 73.3(7) "a" does not apply when both of the following conditions are met:

(1) a A car door or gate is closed by power through continuous pressure of a door-closing switch; ~~or of the car operating device, and~~

(2) where the The release of the closing switch or operating device will cause the car door or gate to stop or to stop and reopen.

## LABOR SERVICES DIVISION[875](cont'd)

ITEM 14. Amend subrule 73.3(12) as follows:

**73.3(12)** All automatic passenger elevators shall have their door open zones adjusted ~~to where~~ so that the door shall not open unless the car has stopped within 6 inches of floor level.

ITEM 15. Amend subrule 73.4(1) as follows:

**73.4(1)** Each freight elevator car shall have a solid enclosure ~~of~~ at least 66 inches in height. The space between the solid section and the car top shall be ~~covered~~ enclosed with solid material, or with perforated material, or lattice-type work latticework. ~~The~~ Where used, perforated material or latticework shall reject a ball 1½ inches in diameter. The portion of open-type enclosure which passes the counterweights shall be of solid construction the entire width of the counterweights plus 6 inches on either side. The enclosure top shall be provided with an emergency exit, except for hydraulic elevators with manual lowering valves.  
~~EXCEPTION: Hydraulic elevators provided with a manual lowering valve.~~

ITEM 16. Amend subrule 73.4(2) as follows:

**73.4(2)** Each freight car enclosure shall have doors or gates at each entrance and shall be not less than 6 feet high. Each door or gate shall be constructed in accordance with ANSI A17.1, 1971, Rule 204.4, ~~or later editions of the ASME A17.1 code.~~

ITEM 17. Amend subrule 73.4(9) as follows:

**73.4(9)** Freight elevators shall not be permitted to carry passengers other than the operator and persons to load and unload material and the operator. ~~Permission may be granted to allow the carrying of employees on freight elevators. Application shall be submitted and may be approved by the commissioner after which conveyance shall be tested as determined by the commissioner.~~

ITEM 18. Amend rule 875—73.7(89A) as follows:

**875—73.7(89A) Electrical switches protective devices.**

**73.7(1) to 73.7(3)** No change.

**73.7(4)** ~~Tiller cable~~ Tiller-rope operations shall not be used unless all direction switches on controllers are mechanically operated. Contacts on direction switches shall be broken when the ~~able~~ rope is at the centered position.

**73.7(5)** No change.

**73.7(6)** No person at any time shall make any required safety device or electrical protective device inoperative, except where necessary during tests, inspections or maintenance. Such devices shall be restored to their normal operating conditions as soon as all tests, inspections and maintenance have been completed. The conveyance shall not be left unattended while any of these devices are inoperative. To ensure that no jumpers are left behind, a counting system shall be utilized.

**73.7(7)** Each winding drum machine shall be provided with an electrical switch which shall disconnect power to the hoisting motor and brake when ~~cables~~ ropes are slackened.

**73.7(8)** ~~Any~~ No person ~~entering~~ shall enter an elevator pit for any reason ~~shall have the power to the elevator removed at the main line disconnect switch. The disconnect switch shall be red tagged to prevent the power from being placed back on the elevator controls. EXCEPTION: Elevators provided with a pit stop switch.~~ without disconnecting power to the equipment using the pit stop switch, lockout, tagout procedures, or other appropriate means of de-energization in accordance with 875—Chapters 2 to 26.

**73.7(9)** ~~A fused disconnect means for all elevators shall be provided. Disconnect switch shall be located in the machine room and be readily accessible from the machine. Elevators having a polyphase AC power supply shall be provided with means to prevent the starting of the elevator drive motor or door motor if a reversal of phase rotation, or phase failure of the incoming polyphase AC power, will cause the elevator car or elevator door(s) to operate in the wrong direction.~~

**73.7(10)** All electrical equipment in the machine room shall be grounded and shall conform to ANSI C1-1975 (NFPA 70-1975).

**73.7(11)** All electrical wiring in the machine room and hoistway shall be enclosed in metal conduit, flexible conduit or metal raceways.

## LABOR SERVICES DIVISION[875](cont'd)

ITEM 19. Amend rule 875—73.8(89A) as follows:

**875—73.8(89A) Maintenance, repairs and alterations.**

**73.8(1) General.** All maintenance, repairs and alterations shall comply with ASME A17.1-2007/CSA B44-07 or ASME A17.7-2007/CSA B44-07, as applicable, except as noted in subrules 73.8(3) and 73.8(4). Rule 875—71.10(89A) describes alterations which require that the entire conveyance be brought into compliance with the most current code.

**73.8(2) Exemption for button numbering.** All maintenance, repairs and alterations to devices covered by ANSI A117.1 shall comply with ANSI A117.1 (2003), except for Rule 407.4.6.2.2.

**73.8(3) Sump pump exemption.** The provisions of ASME A17.1-2007/CSA B44-07 and ASME A17.1S-2005, Rule 2.2.2, that require a pit sump or drain shall not apply to an elevator alteration when all of the following criteria are met:

- a. No other code or rule requires that the pit be excavated or lowered.
- b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.
- c. ~~Evidence~~ There is evidence that groundwater has not entered the pit previously.
- d. The location and geology of the building indicate a likelihood that groundwater would enter the pit if the foundation or pit floor were breached to install the pit sump or drain.
- e. A description of alternative means to maintain the pit in a dry condition is provided to the labor commissioner with the alteration permit application.
- f. The labor commissioner approves the alternative means to maintain the pit in a dry condition.
- g. The alternative means to maintain the pit in a dry condition are installed or implemented as described in the alteration permit application.

**73.8(4) Pit excavation exemption.** The full length of the platform guard set forth in ASME A17.1-2007/CSA B44-07 and ASME A17.1S-2005, Rule 2.15.9.2(a), shall not be required if all of the following criteria are met:

- a. No other code or rule requires that the pit be excavated or lowered.
- b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.
- c. A full-length platform guard would strike the pit floor when the elevator is on its fully compressed buffer.
- d. The clearance between the bottom of the platform guard and the pit floor is 2.5 centimeters (1 inch) when the elevator is on its fully compressed buffer.

**73.8(5) Sprinkler retrofits and shunt trip breakers.** When a sprinkler is added to a hoistway or machine room, the conveyance shall comply with the following:

- a. The installation shall comply with the applicable version of ASME A17.1, Rule 2.8.3.3.
- b. The elevator controls shall be arranged to comply with the phase I fire recall provisions of the applicable version of ASME A17.1, Rule 2.27.3.
- c. The applicable version of ASME A17.1 shall be determined by reference to rule 875—72.1(89A). For purposes of rule 875—73.8(89A), the relevant subrule of 875—72.1(89A) shall apply based on the date the sprinkler is installed instead of the date the conveyance was installed.

**73.8(6) Safety bulkheads.**

- a. ASME A17.1-2007, Rule 8.6.5.8, requires either:
  - (1) A safety bulkhead conforming to ASME A17.1-2007, Rule 3.18.3.4;
  - (2) Car safeties conforming to ASME A17.1-2007, Rule 3.17.1, and guide rails, guide rail supports and fastenings conforming to ASME A17.1-2007, Rule 3.23.1; or
  - (3) A plunger gripper conforming to ASME A17.1-2007, Rule 3.17.3, and set to grip when the applicable maximum governor tripping speed in ASME A17.1-2007, Table 2.18.2.1, is achieved.
- b. The deadline for compliance with ASME A17.1-2007, Rule 8.6.5.8, is July 1, 2011.
- c. Documentation from the manufacturer establishing that a safety bulkhead was installed shall establish compliance with this rule.

## LABOR SERVICES DIVISION[875](cont'd)

ITEM 20. Amend subrules 73.9(4) and 73.9(6) as follows:

**73.9(4)** Machine room floors shall be kept clean and free of grease and oil. Articles or materials not necessary for the maintenance or operation of the elevator shall not be stored therein. ~~Flammable liquids having a flash point of less than 110°F shall not be stored in the machine room.~~ Storage of any equipment or materials in elevator machine rooms other than equipment directly related to elevator operation is prohibited.

**73.9(6)** Where there is more than one machine in a room, each machine shall have a different number conspicuously marked on it. The controller, ~~disconnect switch~~ disconnecting means and relay panels for each machine shall be conspicuously numbered to correspond to the machine ~~it controls~~ they control.

ITEM 21. Rescind subrules **73.9(7)** to **73.9(9)**.

ITEM 22. Amend subrule 73.10(4) as follows:

**73.10(4)** Buffers shall be installed where elevator pits are not provided with buffers and where the pit depth will permit. Buffers shall comply with ANSI A17.1, 1971, Section 201, ~~or later editions of the ASME A17.1 code.~~

ITEM 23. Amend rule 875—73.13(89A) as follows:

**875—73.13(89A) Wire ropes—hoisting, governor and tiller Means of suspension.**

**73.13(1)** All hoisting and governor ropes, when replaced, shall have rope tags. The tags shall provide the following information:

- ~~a. — The diameter in inches.~~
- ~~b. — The manufacturer's rated breaking strength.~~
- ~~c. — The grade of material used.~~
- ~~d. — The month and year ropes were installed.~~
- ~~e. — Whether preformed or nonpreformed.~~
- ~~f. — Construction classification.~~
- ~~g. — Name of person or firm who installed ropes.~~
- ~~h. — Name of manufacturer of ropes.~~

~~**73.13(2)** Wire ropes on drum type machines shall be resocketed in compliance with ASME A17.1 (1999) code.~~

~~**73.13(3)**~~ **73.13(1)** Suspension ropes on drum-type machines shall have not less than one turn of the rope on the drum when the car is resting on the fully compressed buffers.

~~**73.13(4)**~~ **73.13(2)** Winding drum machines shall not be used unless they are provided with not less than two hoisting ropes. Each counterweight stack shall be provided with not less than two ropes.

~~**73.13(5)**~~ **73.13(3)** Tiller cables on cable-operated elevators shall be kept free of breaks.

~~**73.13(6)**~~ **73.13(4)** On tiller-cable operations, the cable shall pass through a guiding or stopping device mounted on the car. The cable shall be provided with adjustable stop balls and be provided with means to lock and hold the car at a floor. Stop balls at top and bottom shall be adjusted to automatically stop the car. The tiller cable shall be completely enclosed in the hoistway.

~~**73.13(7)**~~ **73.13(5)** All hoisting or counterweight ropes located outside of the hoistway that are exposed shall be covered with a box-type guard. The guard shall be not less than 6 feet high from floor level.

~~**73.13(8)** Hoisting, governor and tiller ropes shall not be lengthened or repaired by splicing.~~

~~**73.13(9)**~~ **73.13(6)** Suspension means of chains other than a roller chain type shall not be allowed. Any elevator suspended by a roller chain type shall not be used for the carrying of passengers. EXCEPTION: Handicapped restricted use elevators. Roller chains shall not be used as the suspension means for any conveyance except where specifically allowed by an applicable provision of ASME A17.1.

~~**73.13(10)**~~ **73.13(7)** Hoisting ropes for power elevators shall not be less than 3/8 inch in diameter.

~~**73.13(11)**~~ **73.13(8)** Hoisting rope fastening means shall be of the socket and babbiting type. Clamps shall not be used.

## LABOR SERVICES DIVISION[875](cont'd)

~~73.13(12) Rope (cable) replacement. Hoisting, governor and tiller ropes shall be replaced when the ASME Inspection Manual for Electric Elevators A17.2.1 (1993), adopted here by reference, or later editions of the ASME A17.2.1 code, dictates they shall be changed.~~

ITEM 24. Amend subrule 73.14(4) as follows:

**73.14(4)** All safeties shall be adjusted so that clearances from the rail shall be in accordance with ANSI A17.1, 1971, Rule 1001.2, ~~or later editions of the ASME A17.1 code.~~

ITEM 25. Amend rule 875—73.15(89A) as follows:

**875—73.15(89A) Guide rails.**

**73.15(1)** All guide rails and brackets whether of wood or steel shall be firmly and securely anchored or bolted in place. Where T rail is used, all fish-plate bolts shall be tight. This shall comply with ANSI A17.1, 1981, Section 200, ~~or later editions of the ASME A17.1 code.~~

**73.15(2)** Where guide rails which are worn to such a point that proper clearance of safety jaws cannot be maintained, the worn sections shall be replaced to achieve clearances as specified in ANSI A17.1, 1971, Rule 1001.2, ~~or later editions of the ASME A17.1 code.~~

ITEM 26. Amend subrules 73.17(1) and 73.17(8) as follows:

**73.17(1)** Hoistways shall be permanently enclosed. The enclosures shall conform to ANSI A17.1, 1971, Rule 401.1, ~~or later editions of the ASME A17.1 code.~~

**73.17(8)** Operating devices and control equipment shall comply with ANSI A17.1, 1971, Rule 402.4, ~~or later editions of the ASME A17.1 code.~~

ITEM 27. Rescind subrule 73.18(2) and adopt the following **new** subrule in lieu thereof:

**73.18(2)** A sign reading “Danger—Elevator Hoistway—Keep Closed” shall be mounted on each hoistway door. The letters on the signs shall be legible, shall be at least 2 inches high, and shall contrast with the background color.

ITEM 28. Amend rule 875—73.19(89A) as follows:

**875—73.19(89A) Power-operated special purpose elevators.**

**73.19(1) to 73.19(3)** No change.

**73.19(4)** Wiring shall comply with the requirements of the National Electrical Code, ANSI C1-1975 (NFPA 70-1975) ~~or newer NFPA 70 codes.~~

**73.19(5)** Counterweights shall comply with rule 875—73.11(89A), ~~or later editions of the ASME A17.1 code.~~

**73.19(6)** Hoistway doors shall comply with subrules 73.2(1), 73.2(7) and 73.2(11), ~~or later editions of the ASME A17.1 code.~~

**73.19(7)** Cars shall be solidly constructed in accordance with subrules 73.12(1) and 73.12(2), ~~or later editions of the ASME A17.1 code.~~

**73.19(8) and 73.19(9)** No change.

**73.19(10)** Guide rails shall comply with rule 875—73.15(89A), ~~or later editions of the ASME A17.1 code.~~

**73.19(11)** The means and methods of suspension shall comply with subrules ~~73.13(1), 73.13(2), 73.13(3), 73.13(7), 73.13(8), 73.13(9), 73.13(10), 73.13(11), 73.13(12) and 73.13(13), or later editions of the ASME A17.1 code~~ 73.13(1), 73.13(5), 73.13(6), 73.13(7), and 73.13(8).

**73.19(12)** Electrical switches shall comply with subrules 73.7(2) and 73.7(9), ~~or later editions of NFPA 70.~~

**73.19(13)** Brakes shall comply with rule 875—73.5(89A), ~~or later editions of the ASME A17.1 code.~~

**73.19(14)** No change.

ITEM 29. Amend rule 875—73.21(89A), introductory paragraph, as follows:

**875—73.21(89A) Handicapped restricted use elevators.** All handicapped restricted use elevators must meet ANSI A17.1 (1981), Part V, ~~or later editions of the ASME code.~~ Permits will be reissued only

## LABOR SERVICES DIVISION[875](cont'd)

for locations where other elevators do not exist and where the absence of the elevator would deprive a known group of physically disabled individuals use of the building. Additionally, the elevators shall comply with the following limitations:

- ITEM 30. Rescind and reserve rules **875—73.23(89A)**, **875—73.25(89A)** and **875—73.26(89A)**.
- ITEM 31. Rescind and reserve **875—Chapter 75** and **Chapter 76**.

**ARC 7697B****LABOR SERVICES DIVISION[875]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 89A.3, the Labor Commissioner hereby gives Notice of Intended Action to amend proposed Chapter 71, "Administration of the Conveyance Safety Program," Iowa Administrative Code. (See **ARC 7696B** herein.)

Pursuant to Iowa Code section 89A.3, the Labor Commissioner may adopt rules concerning the denial, issuance, revocation and suspension of special inspector commissions. The amendment proposes a new rule governing the issuance, denial, probation, revocation, and suspension of special inspector commissions. The proposed new rule is more current and provides more detail than the existing rule.

The principal reasons for adoption of this amendment are to implement Iowa Code chapter 89A and to protect the public safety and health.

Written data, views, or arguments to be considered in adoption shall be submitted no later than April 29, 2009, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

A public hearing will be held on April 29, 2009, at 1:30 p.m. in the Capitol View Room at Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. The public will be given the opportunity to make oral statements and submit documents. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

This amendment is intended to implement Iowa Code chapters 89A, 252J, 261 and 272D.

The following amendment is proposed.

Adopt the following **new** rule 875—71.12(89A,252J,261,272D):

**875—71.12(89A,252J,261,272D) Special inspector commissions.**

**71.12(1) Definition.** As used in this rule, "certificate of noncompliance" means:

- a. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J;
- b. A certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code chapter 261; or
- c. A certificate of noncompliance issued by the centralized collection unit of the department of revenue pursuant to Iowa Code chapter 272D.

**71.12(2) Qualifications.**

- a. Each applicant must possess a high school diploma or general equivalency degree.
- b. Each applicant shall have at least three years of full-time work experience in the construction, installation, repair or inspection of conveyances.
- c. Each applicant shall be a CEI.

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*d.* Each applicant shall satisfactorily pass a division of labor services examination on Iowa procedures, Iowa policies, and all safety standards adopted by reference.

*e.* Each applicant shall submit proof of insurance coverage insuring the applicant against liability for injury or death for any act or omission on the part of the applicant. The insurance policy shall be in an amount of not less than \$1,000,000 for bodily injury to or death of one person in any one accident, and in an amount of not less than \$5,000,000 for bodily injury to or death of two or more persons in any one accident, and in an amount of not less than \$100,000 for damage to or destruction of property in any one accident. The insurance coverage of the special inspector's employer shall be considered to comply with this requirement if the coverage provides equivalent coverage for each special inspector.

**71.12(3) Application.** An applicant for a commission shall complete, sign, and submit to the division the form provided by the division with the required fee. The applicant shall include with the application proof that the applicant is a CEI.

**71.12(4) Expiration.** The commission expires when the commission is suspended or revoked by the labor commissioner or one year from issuance, whichever occurs earlier.

**71.12(5) Changes.** The special inspector shall notify the division at the time any of the information on the form or attachments changes.

**71.12(6) Denials.** The labor commissioner may refuse to issue or renew a special inspector's commission for failure of the applicant to complete an application package, if the applicant is not a CEI, or for any reason listed in subrules 71.12(8) to 71.12(10).

**71.12(7) Investigations.** The labor commissioner may investigate for any reasonable cause related to special inspectors or special inspector applicants. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice at the times and in the places the labor commissioner directs. The labor commissioner may notify the organization that certified the special inspector as a CEI of the findings of an investigation.

**71.12(8) Reasons for probation.** The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector filed inaccurate reports.

**71.12(9) Reasons for suspension.** The labor commissioner may issue a notice of commission suspension when an investigation reasonably reveals any of the following:

- a.* The special inspector failed to submit and report inspections on a timely basis;
- b.* The special inspector abused the special inspector's authority;
- c.* The special inspector misrepresented self as a state inspector or a state employee;
- d.* The special inspector used commission authority for inappropriate personal gain;
- e.* The special inspector failed to follow the division's rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;
- f.* The special inspector committed numerous violations as described in subrule 71.12(8);
- g.* The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;
- h.* The special inspector is no longer a CEI;
- i.* The division received a certificate of noncompliance; or
- j.* The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs 71.12(9) "a" to "h."

**71.12(10) Reasons for revocation.** The labor commissioner may issue a notice of revocation of a special inspector's commission when an investigation reveals any of the following:

- a.* The special inspector filed a misleading, false or fraudulent report;
- b.* The special inspector failed to perform a required inspection;
- c.* The special inspector failed to file a report or filed a report which was not in accordance with the provisions of applicable standards;
- d.* The special inspector committed repeated violations as described in subrule 71.12(9);
- e.* The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;
- f.* The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs 71.12(10) "a" to "e";

## LABOR SERVICES DIVISION[875](cont'd)

- g. The special inspector is no longer a CEI; or
- h. The division received a certificate of noncompliance.

**71.12(11) Procedures.** The following procedures shall apply except in the event of revocation or suspension due to receipt of a certificate of noncompliance. In instances involving receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J, 261, or 272D shall apply.

*a. Notice of actions.* The labor commissioner shall serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A.

*b. Contested cases.* The special inspector shall have 20 days to file a written notice of contest with the labor commissioner. If the special inspector does not file a written contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.

*c. Hearing procedures.* The hearing procedures in 875—Chapter 1 shall govern.

*d. Emergency suspension.* Pursuant to Iowa Code section 17A.18A, if the labor commissioner finds that the public health, safety or welfare imperatively requires emergency action because a special inspector failed to comply with applicable laws or rules, the special inspector's commission may be summarily suspended.

*e. Probation period.* A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.

*f. Suspension period.* A special inspector's commission may be suspended up to five years for each incident causing a suspension.

*g. Revocation period.* A special inspector's commission that has been revoked shall not be reinstated for five years.

*h. Concurrent actions.* Multiple actions may proceed at the same time against any special inspector.

*i. Revoked or suspended commissions.* Within five business days of final agency action revoking or suspending a special inspector commission, the special inspector shall surrender the special inspector's commission card to the labor commissioner. The labor commissioner may notify the special inspector's employer and the organization that certified the special inspector as a CEI of a revocation or suspension.

**ARC 7693B****NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 51, "Game Management Areas," Iowa Administrative Code.

Chapter 51 establishes state-owned lands and waters under the jurisdiction of the Department of Natural Resources as game management areas to preserve the biological balance, protect public parks and public health, safety and welfare, and to effect sound wildlife management.

These amendments add all of Pool 15 and the portion of Pool 14 below the National Wildlife and Fish Refuge to those pools of the Mississippi River where the use of stationary blinds and waterfowl decoys is allowed.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 29, 2009. Written comments may be directed to the Wildlife Bureau's Web site at [www.iowadnr.com](http://www.iowadnr.com) or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to

## NATURAL RESOURCE COMMISSION[571](cont'd)

convey their views orally should contact the Wildlife Bureau at (515)281-5034 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be public hearings held at 18 locations via the Iowa Communications Network on April 29, 2009, from 6 to 9 p.m. Interested persons should contact the Department at (515)281-5034 for a list of hearing locations or go to the Department's Web site at [www.iowadnr.com](http://www.iowadnr.com). At the hearings, persons may present their views either orally or in writing. Persons attending the hearings will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 456A.24(2)"a" and 481A.6.

The following amendments are proposed.

ITEM 1. Amend subrule 51.6(1), introductory paragraph, as follows:

**51.6(1)** *Stationary blinds.* The construction and use of stationary blinds on all game management areas, except on Pool 14 downstream of the Upper Mississippi River National Wildlife and Fish Refuge (River Mile 502) near Princeton, Iowa, and on Pools 15, 16, 17, and 18 of the Mississippi River, are restricted as follows:

ITEM 2. Amend subrule 51.6(3), introductory paragraph, as follows:

**51.6(3)** *Use of waterfowl decoys.* The use of waterfowl decoys on any game management area, except on Pool 14 downstream of the Upper Mississippi River National Wildlife and Fish Refuge (River Mile 502) near Princeton, Iowa, and on Pools 15, 16, 17, and 18 of the Mississippi River, is restricted as follows:

ITEM 3. Amend subrule 51.6(4), introductory paragraph, as follows:

**51.6(4)** *Use of stationary blinds and waterfowl decoys on Pool 14 downstream of the Upper Mississippi River National Wildlife and Fish Refuge (River Mile 502) near Princeton, Iowa, and on Pools 15, 16, 17, and 18 of the Mississippi River.* The use of permanent blinds for waterfowl hunting on Pool 14 downstream of the Upper Mississippi River National Wildlife and Fish Refuge (River Mile 502) near Princeton, Iowa, and on Pools 15, 16, 17, and 18 of the Mississippi River is restricted as follows:

**ARC 7685B**

## NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 52, "Wildlife Refuges," Iowa Administrative Code.

This amendment adds four areas to the list of areas upon which game refuges can be posted.

Any interested person may make written suggestions or comments on the proposed amendment on or before April 29, 2009. Written comments may be directed to the Wildlife Bureau's Web site at [www.iowadnr.com](http://www.iowadnr.com) or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-5034 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

NATURAL RESOURCE COMMISSION[571](cont'd)

Also, there will be public hearings held at 18 locations via the Iowa Communications Network on April 29, 2009, from 6 to 9 p.m. Interested persons should contact the Department at (515)281-5034 for a list of hearing locations or go to the Department’s Web site at [www.iowadnr.com](http://www.iowadnr.com). At the hearings, persons may present their views either orally or in writing. Persons attending the hearings will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code sections 481A.5, 481A.6, 481A.9 and 481A.39. The following amendment is proposed.

Amend paragraph **52.1(2)“a”** as follows:

a. Restrictions. The following areas under the jurisdiction of the department of natural resources are established as game refuges where posted. It shall be unlawful to hunt, pursue, kill, trap, or take any wild animal, bird, or game on these areas at any time, and no one shall carry firearms thereon, except where and when specifically authorized by the department of natural resources. It shall also be unlawful to trespass in any manner on the following areas, where posted, between the dates of September 1 and January 31 of each year, both dates inclusive, except that department personnel and law enforcement officials may enter the area at any time in performance of their duties, and hunters, under the supervision of department staff, may enter when specifically authorized by the department of natural resources.

<u>Area</u>	<u>County</u>
Lake Icaria . . . . .	Adams
Pool Slough Wildlife Area . . . . .	Allamakee
Rathbun Area . . . . .	Appanoose, Lucas, Wayne
Sedan Bottoms . . . . .	Appanoose
Wildlife Exhibit Area . . . . .	Boone
Sweet Marsh . . . . .	Bremer
Big Marsh . . . . .	Butler
South Twin Lake . . . . .	Calhoun
<u>Ventura Marsh</u> . . . . .	<u>Cerro Gordo</u>
Round Lake . . . . .	Clay
Allen Green Refuge . . . . .	Des Moines
Henderson . . . . .	Dickinson
Jemmerson Slough Complex . . . . .	Dickinson
Spring Run . . . . .	Dickinson
Ingham Lake . . . . .	Emmet
Forney Lake . . . . .	Fremont
Riverton Area . . . . .	Fremont
Dunbar Slough . . . . .	Greene
Bays Branch . . . . .	Guthrie
<u>Crystal Hills</u> . . . . .	<u>Hancock</u>
<u>Eagle Flats</u> . . . . .	<u>Hancock</u>
<u>Eagle Lake</u> . . . . .	<u>Hancock</u>
Green Island Area . . . . .	Jackson
Hawkeye Wildlife Area . . . . .	Johnson
Muskrat Slough . . . . .	Jones
Colyn Area . . . . .	Lucas
Red Rock Area . . . . .	Marion, Polk, Warren
Badger Lake . . . . .	Monona
Tieville/Decatur Bend . . . . .	Monona
Five Island Lake . . . . .	Palo Alto

NATURAL RESOURCE COMMISSION[571](cont'd)

Big Creek-Saylorville Complex .....	Polk
Chichaqua Area .....	Polk
Smith Area .....	Pottawattamie
McCausland .....	Scott
Princeton Area .....	Scott
Prairie Rose Lake .....	Shelby
Otter Creek Marsh .....	Tama
Green Valley Lake .....	Union
Three Mile Lake .....	Union
Lake Sugema .....	Van Buren
Rice Lake Area .....	Winnebago
Snyder Lake .....	Woodbury
Elk Creek Marsh .....	Worth
Lake Cornelia .....	Wright

**ARC 7686B**

**NATURAL RESOURCE COMMISSION[571]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

These rules give the regulations for hunting waterfowl and coot and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting. These amendments adjust the season dates to comply with federal regulations and to ensure that the seasons open on weekends. Additionally, the second segment of the duck season in the north zone will open a week earlier than it did in 2008. The boundary dividing the state into north and south zones for goose hunting is revised so that it is the same as the boundary that divides the state into north and south duck hunting zones. The boundaries for the Canada goose closed area in Worth and Winnebago Counties are redefined. Landowners with permits to hunt in the Canada goose closed hunting zones will be allowed to hunt until October 31 instead of October 15.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 29, 2009. Written comments may be directed to the Wildlife Bureau's Web site at [www.iowadnr.com](http://www.iowadnr.com) or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-5034 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be public hearings held at 18 locations via the Iowa Communications Network on April 29, 2009, from 6 to 9 p.m. Interested persons should contact the Department at (515)281-5034 for a list of hearing locations or go to the Department's Web site at [www.iowadnr.com](http://www.iowadnr.com). At the hearings, persons may present their views either orally or in writing. Persons attending the hearings will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

## NATURAL RESOURCE COMMISSION[571](cont'd)

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, and 481A.48. The following amendments are proposed.

ITEM 1. Amend subrules 91.1(2) and 91.1(3) as follows:

**91.1(2) Season dates - north zone.** For all ducks: September ~~20~~ 19 through September ~~24~~ 23 and October ~~18~~ 17 through December ~~11~~ 10.

**91.1(3) Season dates - south zone.** For all ducks: September ~~20~~ 19 through September ~~24~~ 23 and October ~~18~~ 17 through December ~~11~~ 10.

ITEM 2. Amend subrules 91.3(1), 91.3(2) and 91.3(3) as follows:

**91.3(1) Zone boundaries.** ~~The north goose hunting zone is that part of Iowa north of U.S. Highway 20.~~ The north goose hunting zone is that part of Iowa north of a line beginning on the Nebraska-Iowa border at State Highway 175, east to State Highway 37, southeast to State Highway 183, northeast to State Highway 141, east to U.S. Highway 30, and along U.S. Highway 30 to the Iowa-Illinois border. The south goose hunting zone is the remainder of the state.

**91.3(2) Season dates - north zone.** Canada geese and brant: September ~~27~~ 26 through October ~~5~~ 4 and October ~~18~~ 17 through December ~~21~~ 20 and December ~~27~~ 26 through January ~~11, 2009~~ 10, 2010. White-fronted geese: September ~~27~~ 26 through December ~~7~~ 6. Light geese (white and blue-phase snow geese and Ross' geese): September ~~27~~ 26 through January ~~11, 2009~~ 10, 2010.

**91.3(3) Season dates - south zone.** Canada geese and brant: September ~~27~~ 26 through October ~~5~~ 4 and October ~~18~~ 17 through December ~~21~~ 20 and December ~~27~~ 26 through January ~~11, 2009~~ 10, 2010. White-fronted geese: September ~~27~~ 26 through December ~~7~~ 6. Light geese (white and blue-phase snow geese and Ross' geese): September ~~27~~ 26 through January ~~11, 2009~~ 10, 2010.

ITEM 3. Amend subrule 91.3(7), introductory paragraph, as follows:

**91.3(7) Light goose conservation order season.** Only light geese (white and blue-phase snow geese and Ross' geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service from January ~~12, 2009~~ 11, 2010, through April 15, ~~2009~~ 2010.

ITEM 4. Amend paragraph **91.4(2)“d”** as follows:

~~d. Area four. Portions of Winnebago and Worth Counties bounded as follows: Beginning at a point two and one-half miles east of Lake Mills, Iowa, at the junction of State Highway 105 and County Road S10 (also named Bluebill Ave.); thence south along County Road S10 (including the right-of-way), i.e., Bluebill Ave., three-fourths mile to 448th St.; thence east three-fourths mile on 448th St. to Cardinal Ave.; thence south one-fourth mile to 445th St.; thence east one-fourth mile to Cedar Ave.; thence south one-half mile on Cedar Ave. to 440th St.; thence east three-fourths mile on 440th St. to Dove Ave.; thence south on Dove Ave. one-half mile to 435th St.; thence east one-fourth mile on 435th St. to Dove Ave.; thence south on Dove Ave. to County Road A34; thence east one mile on County Road A34 (including the right-of-way) to Evergreen Ave.; thence south two miles to County Road A38 (also named 410th St.); thence west eight and one-half miles along County Road A38 including the right-of-way; thence north four miles along County Road R72 (also named 210th Ave.) (including the right-of-way); thence east along State Highway 69 approximately one mile (including the right-of-way) to the intersection with State Highway 105; thence east along State Highway 105 (including the right-of-way) five miles to the point of beginning.~~ Portions of Winnebago and Worth Counties bounded as follows: Beginning at the junction of U.S. Highway 69 and County Road 105 in the city of Lake Mills; thence east along County Road 105 (including the right-of-way and all other road right-of-ways identified in this description) approximately 5 miles to Dogwood Ave.; thence south along Dogwood Ave. to 440th St.; thence east one-fourth mile on 440th St. to Dove Ave.; thence south on Dove Ave. one-half mile to 435th St.; thence east one-fourth mile on 435th St. to Dove Ave.; thence south on Dove Ave. to County Road A34; thence east one mile on County Road A34 (also named 430th St.) to Evergreen Ave.; thence south one mile to 420th St.; thence west along 420th St. to Cedar Ave.; thence south one-half mile along Cedar Ave. to Lake St.; thence west one-fourth mile along Lake St. to Front St.; thence southeast one-half mile along Front St. to County Road A38 (also named 410th St.); thence west along County Road A38 to County Road R74 (also named 225th Ave.); thence north along County Road R74 to 420th St.; thence west along

## NATURAL RESOURCE COMMISSION[571](cont'd)

420th St. to County Road R72 (also named 210th Ave.); thence north along County Road R72 to U.S. Highway 69; thence east along U.S. Highway 69 to point of beginning.

ITEM 5. Amend subrule 91.5(1), introductory paragraph, as follows:

**91.5(1)** ~~Clay County, Dickinson County, Emmet County, Jackson County, and Butler County closed areas.~~ Closed areas. Area one (Emmet Co.), Area two (Clay and Palo Alto Cos.), Area three (Dickinson Co.), Area four (Winnebago and Worth Cos.), Area eleven (Jackson Co.), and Area fifteen (Butler Co.) as described in subrule 91.4(2).

ITEM 6. Amend subparagraph **91.5(1)“b”(7)** as follows:

(7) Hunting within the closed area will be allowed through October ~~15~~ 31.

ITEM 7. Amend rule 571—91.6(481A) as follows:

**571—91.6(481A) Youth waterfowl hunt.** A special youth waterfowl hunt will be held on October 4 ~~and 5, 2008~~ 3 and 4, 2009, in the north duck hunting zone and October 4 ~~and 5, 2008~~ 3 and 4, 2009, in the south duck hunting zone. Youth hunters must be residents of Iowa as defined in Iowa Code section 483A.1A and less than 16 years old. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks and coots. The adult may hunt for any other game birds for which the season is open. The daily bag and possession limits are the same as for the regular waterfowl season, as defined in rule 91.1(481A). All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

**ARC 7688B**

## NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 95, “Game Harvest Reporting and Landowner-Tenant Registration,” Iowa Administrative Code.

These rules give the regulations for reporting deer and turkey harvest and for registering for landowner-tenant licenses. The proposed amendments remove the three-year eligibility period limit and require registered landowners and tenants to notify the Department if their registration information or eligibility status changes. Eligibility will be periodically verified by Department staff.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 29, 2009. Written comments may be directed to the Wildlife Bureau’s Web site at [www.iowadnr.com](http://www.iowadnr.com) or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-5034 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be public hearings held at 18 locations via the Iowa Communications Network on April 29, 2009, from 6 to 9 p.m. Interested persons should contact the Department at (515)281-5034 for a list of hearing locations or go to the Department’s Web site at [www.iowadnr.com](http://www.iowadnr.com). At the hearings, persons may present their views either orally or in writing. Persons attending the hearings will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

## NATURAL RESOURCE COMMISSION[571](cont'd)

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1, 483A.7 and 483A.24.

The following amendments are proposed.

ITEM 1. Amend rule 571—95.2(481A), introductory paragraph, as follows:

**571—95.2(481A) Verifying eligibility for free landowner or tenant licenses.** Eligibility for free and reduced-fee deer and wild turkey hunting licenses, which are hereafter referred to as free licenses, is defined in Iowa Code section 483A.24, rule 571—98.5(483A) and rule 571—106.12(481A). The electronic licensing system for Iowa (ELSI) will not issue free licenses to persons who have not registered their eligibility with ELSI. ~~Registering once will enable a landowner or tenant and any eligible family members to receive all the free licenses for which the landowner or tenant is eligible for three years after the date of registration, provided the landowner's and tenant's eligibility status does not change within the three-year period.~~

ITEM 2. Amend subrule 95.2(6) as follows:

**95.2(6) Registration expiration and renewal.** ~~A landowner or tenant shall renew the landowner's or tenant's registration whenever the landowner's or tenant's eligibility or the eligibility of a family member changes. A landowner or tenant shall renew the landowner's or tenant's registration after three years to retain free license privileges. A registered landowner, tenant, or eligible family member may obtain free licenses as allowed in subrule 95.2(2) provided the registration information and eligibility status remain valid. If the registration information or eligibility status of a registered landowner, tenant, or eligible family member changes, that individual must send by U.S. mail or by fax a DNR affidavit form or contact the DNR by telephone. The DNR will periodically review registration information to verify eligibility status and will inactivate registrations when the registration information fails to indicate eligibility.~~

**ARC 7689B**

## NATURAL RESOURCE COMMISSION[571]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 99, "Wild Turkey Fall Hunting by Residents," Iowa Administrative Code.

These amendments reduce the quota for fall turkey season in portions of Iowa where turkey brood surveys indicate turkey production has been below average and remove the option for a third fall turkey license.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 29, 2009. Written comments may be directed to the Wildlife Bureau's Web site at [www.iowadnr.com](http://www.iowadnr.com) or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-5034 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be public hearings held at 18 locations via the Iowa Communications Network on April 29, 2009, from 6 to 9 p.m. Interested persons should contact the Department at (515)281-5034 for

## NATURAL RESOURCE COMMISSION[571](cont'd)

a list of hearing locations or go to the Department's Web site at [www.iowadnr.com](http://www.iowadnr.com). At the hearings, persons may present their views either orally or in writing. Persons attending the hearings will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

The following amendments are proposed.

ITEM 1. Amend subrule 99.2(3) as follows:

**99.2(3) *Number of licenses.*** No one may apply for or obtain more than two wild turkey fall hunting licenses, whether free or paid, ~~prior to November 1~~. A hunter may obtain no more than two combination shotgun-or-archery licenses, or two archery-only licenses, or one of each. ~~Beginning November 1, a hunter may obtain an additional paid combination shotgun-or-archery license if quotas are not filled.~~ One license of either type may be free to eligible landowners or tenants.

ITEM 2. Amend subrule 99.5(1) as follows:

**99.5(1) *Combination shotgun-or-archery licenses.*** A limited number of paid combination shotgun-or-archery licenses will be issued by zone as follows:

- a. Zone 4. ~~4,500~~ 1,500
- b. Zone 5. ~~700~~ 650
- c. Zone 6. ~~3,000~~ 1,400
- d. Zone 7. ~~400~~ 250
- e. Zone 8. 150
- f. Zone 9. 200

**ARC 7690B****NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 106, "Deer Hunting by Residents," Iowa Administrative Code.

These amendments remove 17 counties from the paid November and January antlerless-deer-only seasons and restrict the November antlerless-deer-only licenses to the taking of antlerless deer on private land. The January antlerless-deer-only licenses will go on sale on December 15. The antlerless-deer-only quotas were increased in 13 counties and reduced in 5 counties. The county antlerless-deer-only quotas may need to be adjusted after deer population surveys are completed. The amendments also clarify that statewide paid any-deer licenses may not be used in deer population management zones if prohibited by the rules for the management zone. The amendments specify that all antlers from deer taken on shooting permits issued as part of a depredation agreement must be turned over to a conservation officer within 48 hours.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 29, 2009. Written comments may be directed to the Wildlife Bureau's Web site at [www.iowadnr.com](http://www.iowadnr.com) or may be sent to the Wildlife Bureau Chief, Department of Natural Resources,

## NATURAL RESOURCE COMMISSION[571](cont'd)

Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-5034 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be public hearings held at 18 locations via the Iowa Communications Network on April 29, 2009, from 6 to 9 p.m. Interested persons should contact the Department at (515)281-5034 for a list of hearing locations or go to the Department's Web site at [www.iowadnr.com](http://www.iowadnr.com). At the hearings, persons may present their views either orally or in writing. Persons attending the hearings will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.24, 483A.24B, and 483A.24C.

The following amendments are proposed.

ITEM 1. Amend paragraph **106.1(1)“a”** as follows:

*a. Any-deer licenses.* Any-deer licenses shall be valid for taking deer of either sex in one season selected at the time the license is purchased. Paid any-deer licenses shall be valid statewide ~~or in a deer population management zone and in one season as selected at the time the license is purchased~~ except where prohibited in deer population management zones established under 571—Chapter 105. Free any-deer licenses shall be valid only on the farm unit of an eligible landowner or tenant in the season or seasons selected at the time the license is obtained.

ITEM 2. Amend subrule 106.6(3) as follows:

**106.6(3) November antlerless-deer-only season.** Antlerless-deer-only licenses for the November antlerless-deer-only season shall be available in the following counties: Adair, Adams, Allamakee, Appanoose, ~~Benton, Bremer, Buchanan,~~ Cass, ~~Cedar, Chickasaw,~~ Clarke, Clayton, ~~Clinton,~~ Dallas, Davis, Decatur, ~~Delaware,~~ Des Moines, ~~Dubuque,~~ Fayette, Fremont, Guthrie, Harrison, Henry, ~~Howard,~~ ~~Iowa,~~ Jackson, Jasper, Jefferson, ~~Johnson, Jones,~~ Keokuk, Lee, ~~Linn,~~ Louisa, Lucas, Madison, Mahaska, Marion, Mills, Monona, Monroe, Montgomery, ~~Muscatine,~~ Page, Polk, Pottawattamie, ~~Poweshiek,~~ Ringgold, ~~Scott,~~ Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Winneshiek, and Woodbury. Beginning the second Saturday prior to the opening of the November antlerless-deer-only season, an unlimited number of paid antlerless-deer-only licenses may be purchased for the November antlerless-deer-only season. These licenses may be obtained regardless of any other paid any-deer or paid antlerless-deer-only licenses that may have been obtained. Licenses will be sold until county quotas are filled. Licenses issued for this season are valid only on private property.

ITEM 3. Amend subrule 106.6(4) as follows:

**106.6(4) January antlerless-deer-only licenses.** Antlerless-deer-only licenses for the January antlerless-deer-only season shall be available in the following counties: Adair, Adams, Allamakee, Appanoose, ~~Benton, Bremer, Buchanan,~~ Cass, ~~Cedar, Chickasaw,~~ Clarke, Clayton, ~~Clinton,~~ Dallas, Davis, Decatur, ~~Delaware,~~ Des Moines, ~~Dubuque,~~ Fayette, Fremont, Guthrie, Harrison, Henry, ~~Howard,~~ ~~Iowa,~~ Jackson, Jasper, Jefferson, ~~Johnson, Jones,~~ Keokuk, Lee, ~~Linn,~~ Louisa, Lucas, Madison, Mahaska, Marion, Mills, Monona, Monroe, Montgomery, ~~Muscatine,~~ Page, Polk, Pottawattamie, ~~Poweshiek,~~ Ringgold, ~~Scott,~~ Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Winneshiek, and Woodbury. Beginning December 15, an unlimited number of paid antlerless-deer-only licenses may be purchased for the January antlerless-deer-only season. These licenses may be obtained regardless of any other paid any-deer or paid antlerless-deer-only licenses that may have been obtained.

ITEM 4. Amend subrule 106.6(6) as follows:

**106.6(6) Antlerless-deer-only licenses.** Paid antlerless-deer-only licenses will be available by county as follows:

## NATURAL RESOURCE COMMISSION[571](cont'd)

County	Quota	County	Quota	County	Quota
Adair	2100	Floyd	<del>250</del> <u>150</u>	Monona	<del>1350</del> <u>1600</u>
Adams	1950	Franklin	<del>150</del> <u>100</u>	Monroe	3000
Allamakee	4500	Fremont	1300	Montgomery	1150
Appanoose	3300	Greene	150	Muscatine	1700
Audubon	100	Grundy	0	O'Brien	0
Benton	1000	Guthrie	3300	Osceola	0
Black Hawk	0	Hamilton	100	Page	1500
Boone	650	Hancock	0	Palo Alto	0
Bremer	700	Hardin	400	Plymouth	100
Buchanan	400	Harrison	<del>1350</del> <u>1600</u>	Pocahontas	0
Buena Vista	0	Henry	2000	Polk	<del>1250</del> <u>1500</u>
Butler	<del>250</del> <u>150</u>	Howard	800	Pottawattamie	<del>1600</del> <u>1900</u>
Calhoun	0	Humboldt	0	Poweshiek	750
Carroll	100	Ida	0	Ringgold	2600
Cass	<del>1000</del> <u>1200</u>	Iowa	1200	Sac	0
Cedar	1300	Jackson	1800	Scott	800
Cerro Gordo	0	Jasper	<del>1300</del> <u>1550</u>	Shelby	250
Cherokee	0	Jefferson	2150	Sioux	0
Chickasaw	600	Johnson	2000	Story	500
Clarke	<del>1900</del> <u>2100</u>	Jones	1500	Tama	800
Clay	0	Keokuk	1900	Taylor	2450
Clayton	5800	Kossuth	0	Union	2100
Clinton	1200	Lee	2500	Van Buren	5400
Crawford	150	Linn	1900	Wapello	2150
Dallas	2300	Louisa	1500	Warren	<del>2400</del> <u>2800</u>
Davis	3600	Lucas	<del>1800</del> <u>2100</u>	Washington	2250
Decatur	2800	Lyon	0	Wayne	3000
Delaware	1700	Madison	<del>3000</del> <u>3300</u>	Webster	100
Des Moines	2000	Mahaska	1350	Winnebago	0
Dickinson	0	Marion	<del>1750</del> <u>2000</u>	Winneshiek	3500
Dubuque	2000	Marshall	650	Woodbury	<del>1250</del> <u>1600</u>
Emmet	0	Mills	<del>1150</del> <u>1300</u>	Worth	<del>100</del> <u>50</u>
Fayette	3000	Mitchell	<del>250</del> <u>150</u>	Wright	0

## NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 5. Amend subparagraph **106.11(4)“b”(7)** as follows:

(7) Antlers from all deer recovered must be turned over to the conservation officer within 48 hours. Antlers will ~~to~~ be disposed of according to department rules.

**ARC 7691B**

**NATURAL RESOURCE COMMISSION[571]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 108, “Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, River Otter, Bobcat, Gray (Timber) Wolf and Spotted Skunk Seasons,” Iowa Administrative Code.

Chapter 108 sets the season dates, bag limits, possession limits and areas open to hunting or trapping furbearers.

These amendments change the ending date for the unrestricted taking of muskrats from April 15 to April 1 and add natural resource biologists and county conservation board directors to the list of officials who may permit trappers to disturb muskrat houses on state or county game management areas. The amendment clarifies that persons displaying either bobcats or otters as taxidermy mounts must keep the CITES tag in their possession.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 29, 2009. Written comments may be directed to the Wildlife Bureau’s Web site at [www.iowadnr.com](http://www.iowadnr.com) or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-5034 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be public hearings held at 18 locations via the Iowa Communications Network on April 29, 2009, from 6 to 9 p.m. Interested persons should contact the Department at (515)281-5034 for a list of hearing locations or go to the Department’s Web site at [www.iowadnr.com](http://www.iowadnr.com). At the hearings, persons may present their views either orally or in writing. Persons attending the hearings will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 481A.6, 481A.38, 481A.39, 481A.87, and 481A.90.

The following amendments are proposed.

ITEM 1. Amend subrules 108.1(1) and 108.1(2) as follows:

**108.1(1) *Molesting or disturbing muskrat houses.*** Any department of natural resources officer, natural resource biologist, or county conservation board director may permit trappers to molest or disturb muskrat houses on specific state or county game management areas as provided in Iowa Code section 481A.90, after finding that muskrats are causing excessive damage by destroying the vegetation essential to the welfare of a marsh and after so posting the area.

**108.1(2) *Game management areas.*** Open season for taking muskrats on certain state game management areas, certain federal national wildlife refuges, and certain county conservation board

## NATURAL RESOURCE COMMISSION[571](cont'd)

areas, only where approved by the wildlife bureau and posted accordingly, shall be from 8 a.m. the day after the regular muskrat trapping season ends until April ~~15~~ 1. The use of leg-hold traps during this season is prohibited unless each trap is placed completely inside a muskrat house. No bag or possession limit.

ITEM 2. Amend subrule 108.7(6) as follows:

**108.7(6) Tagging requirements.** Every river otter or bobcat that may legally be kept must have a CITES tag attached. Tags will be supplied by the conservation officer or designated DNR employee. The tag must remain with the pelt until the pelt is sold or used for other purposes that render it no longer available for sale. Persons displaying river otters or bobcats as taxidermy mounts or as other decorative items must keep the tags in their possession as proof of legal harvest.

**ARC 7692B**

**NATURAL RESOURCE COMMISSION[571]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 110, "Trapping Limitations," Iowa Administrative Code.

Chapter 110 sets the requirements for placing, tagging and checking traps and snares.

The amendments prohibit the placement of traps or stakes in the public right-of-way outside of the legal season. They also require that live animals be released immediately or euthanized by the trapper.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 29, 2009. Written comments may be directed to the Wildlife Bureau's Web site at [www.iowadnr.com](http://www.iowadnr.com) or may be sent to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-5034 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be public hearings held at 18 locations via the Iowa Communications Network on April 29, 2009, from 6 to 9 p.m. Interested persons should contact the Department at (515)281-5034 for a list of hearing locations or go to the Department's Web site at [www.iowadnr.com](http://www.iowadnr.com). At the hearings, persons may present their views either orally or in writing. Persons attending the hearings will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 481A.38 and 481A.92.

The following amendments are proposed.

ITEM 1. Amend rule 571—110.1(481A) as follows:

**571—110.1(481A) Public roadside limitations—snares, body-gripping, and conibear type traps.** No person shall set or maintain any snare, body-gripping, or conibear type trap within any public road right-of-way within 200 yards of buildings inhabited by human beings unless a resident of the dwelling adjacent to the public road right-of-way has given permission or unless the body-gripping or conibear type trap is completely ~~under water~~ underwater or at least one-half of the loop of a snare is

## NATURAL RESOURCE COMMISSION[571](cont'd)

~~under water~~ underwater. Nothing in this rule shall be construed as limiting the use of foothold traps or box-type live traps in public road rights-of-way. No person shall place or leave any trap, stake, or nonindigenous set making material upon any public road right-of-way except during the open trapping season.

ITEM 2. Amend rule 571—110.5(481A) as follows:

**571—110.5(481A) Removal of animals from traps and snares.** All animals or animal carcasses caught in any type of trap or snare, except those which are placed entirely underwater and designed to drown the animal immediately, must be removed from the trap or snare by the trap or snare user immediately upon discovery and within 24 hours of the time the animal is caught. All live animals must be released or euthanized immediately upon discovery.

**ARC 7676B**

## **PHARMACY BOARD[657]**

### **Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 124.554, the Board of Pharmacy and the Prescription Monitoring Program Advisory Council jointly give Notice of Intended Action to adopt new Chapter 37, "Iowa Prescription Monitoring Program," Iowa Administrative Code.

These rules were approved by the Board at the March 12, 2009, teleconference meeting of the Board of Pharmacy. These rules were approved by the Prescription Monitoring Program Advisory Council by electronic communication between February 20, 2009, and March 2, 2009.

Proposed Chapter 37 provides for the establishment of a central database program of prescriptions for Schedule II, III, and IV controlled substances prescriptions dispensed in Iowa. Database information regarding the practitioners' patients is available to prescribers and pharmacists (practitioners) to assist the practitioners in determining appropriate pharmaceutical treatment options and to improve the quality of patient care. The proposed rules:

- Define terms used throughout the chapter.
- Identify the dispensers required to submit reports of dispensed prescriptions.
- Identify the records of controlled substance prescriptions to be included in reports from dispensers.
- Identify the data elements to be included in reported prescription records.
- Establish a schedule of reporting periods and due dates for submission of records of reportable prescriptions for those reporting periods, provide for a variety of methods for submitting dispensing records, and require a pharmacy that did not dispense any prescriptions for reportable controlled substances during a reporting period to submit a report indicating zero records for the period.
- Identify individuals who may obtain information from the program database and the procedures for registering and requesting that information.
- Specify procedures for an individual who is the subject of any database record to report false or erroneous information to the program administrator and procedures in response to such a claim.
- Provide that the Board may charge fees, in limited instances, for information available from the program but specifically exempt dispensers and practitioners from the imposition of fees for reporting to or querying information from the program.
- Establish program record retention periods.
- Address the confidentiality of program and database records and identify prohibited acts relating to the program and program information, providing that a pharmacy or practitioner that knowingly fails to

## PHARMACY BOARD[657](cont'd)

comply with the confidentiality provisions of the law or rules, or a dispenser that fails to comply with reporting requirements, is subject to disciplinary action by the individual's or dispenser's professional license board.

- Provide that a member of the program staff who knowingly fails to comply with the confidentiality provisions of the law or rules is subject to disciplinary action by the Board of Pharmacy.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed rules not later than 4:30 p.m. on April 30, 2009. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to [terry.witkowski@iowa.gov](mailto:terry.witkowski@iowa.gov).

A public hearing will be held on April 30, 2009, at 1 p.m. in the large conference room located at the office of the Board of Pharmacy, at the above address, at which time comments may be submitted orally or in writing. At the hearing, persons will be asked to give their names, organizational affiliation if any, and addresses for the record and to confine their remarks to the subject of the amendment.

These rules are intended to implement Iowa Code sections 124.551 to 124.558.

The following amendment is proposed.

Adopt the following **new** 657—Chapter 37:

CHAPTER 37  
IOWA PRESCRIPTION MONITORING PROGRAM

**657—37.1(124) Purpose.** These rules establish a prescription monitoring program that compiles a central database of reportable prescriptions dispensed to patients in Iowa. An authorized health care practitioner may, but is not required to, access prescription monitoring program (PMP) information regarding the practitioner's patient to assist in determining appropriate treatment options and to improve the quality of patient care. The PMP is intended to provide a health care practitioner with a resource for information regarding a patient's use of controlled substances. This database will assist the practitioner in identifying any potential diversion, misuse, or abuse of controlled substances without impeding the appropriate medical use of controlled substances.

**657—37.2(124) Definitions.** As used in this chapter:

“*Board*” means the Iowa board of pharmacy.

“*Controlled substance*” means a drug, substance, or immediate precursor in Schedules I through V set forth in Iowa Code chapter 124, division II.

“*Council*” means the PMP advisory council established pursuant to Iowa Code section 124.555 to provide oversight and to co-manage PMP activities with the board.

“*Database information*” or “*PMP information*” means information submitted to and maintained by the PMP database.

“*DEA number*” means the registration number issued to an individual or pharmacy by the U.S. Department of Justice, Drug Enforcement Administration authorizing the individual or pharmacy to engage in the prescribing, dispensing, distributing, or procuring of a controlled substance.

“*Dispenser*” means a person who delivers to the ultimate user a substance required to be reported to the PMP database. “Dispenser” does not include a person exempt from reporting pursuant to subrule 37.3(1).

“*National drug code*” or “*NDC number*” means the universal product identifier used in the United States to identify a specific human drug product.

“*Patient*” means the person or animal that is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed.

“*Patient's agent*” means a person legally authorized to make health care decisions or gain access to health care records on behalf of the patient for purposes of directing the patient's care.

## PHARMACY BOARD[657](cont'd)

“*Patients rights committee*” or “*committee*” means the physician and pharmacist members of the council responsible for monitoring and ensuring protection and preservation of patients’ rights as provided in Iowa Code section 124.555(3)“e.”

“*PMP administrator*” means the board staff person or persons designated to manage the PMP under the direction and oversight of the board and the council.

“*Practitioner*” means a prescriber or a pharmacist.

“*Prescriber*” means a licensed health care professional with the authority to prescribe prescription drugs including controlled substances.

“*Prescription monitoring program*” or “*PMP*” means the program established pursuant to these rules for the collection and maintenance of PMP information and for the provision of PMP information to authorized individuals, including health care providers, for use in treatment of their patients.

“*Prescription monitoring program database*” or “*PMP database*” means a centralized database of reportable controlled substance prescriptions dispensed to patients and includes data access logs, security tracking information, and records of each individual who requests PMP information.

“*Reportable prescription*” means the record of a Schedule II, III, or IV controlled substance dispensed by a pharmacy to a patient pursuant to a prescriber-authorized prescription. “Reportable prescription” does not include those records excluded in subrule 37.3(1).

“*Schedule II, III, and IV controlled substances*” means those substances that are identified and listed as Schedule II, III, or IV substances in Iowa Code sections 124.205 through 124.210 or in the federal Controlled Substances Act (21 U.S.C. Section 812).

**657—37.3(124) Requirements for the PMP.** Each dispenser, unless identified as exempt from reporting pursuant to subrule 37.3(1), shall submit to the PMP administrator a record of each reportable prescription dispensed during a reporting period.

**37.3(1) Exemptions.** The dispensing of a controlled substance as described in this subrule shall not be considered a reportable prescription. A dispenser engaged in the distribution of controlled substances solely pursuant to one or more of the practices identified in paragraphs “a” or “b” of this subrule shall so notify the PMP administrator and shall be exempt from reporting to the PMP.

a. A licensed hospital pharmacy shall not be required to report the dispensing of a controlled substance for the purposes of inpatient hospital care, the dispensing of a prescription for a starter supply of a controlled substance at the time of a patient’s discharge from such a facility, or the dispensing of a prescription for a controlled substance in a quantity adequate to treat the patient for a maximum of 72 hours.

b. A licensed pharmacy shall not be required to report the dispensing of a controlled substance for a patient residing in a long-term care facility or for a patient residing in an inpatient hospice facility.

c. A prescriber or other authorized person who administers or dispenses a controlled substance, including samples of a controlled substance, for the purposes of outpatient care shall not be required to report such administration or dispensing. This exception shall not apply to a pharmacist who administers a controlled substance, as directed by the prescriber, pursuant to a prescription.

d. A wholesale distributor of a controlled substance shall not be required to report the wholesale distribution of such a substance.

**37.3(2) Data elements.** The information submitted for each prescription shall include, at a minimum, the following items:

- a. Dispenser DEA number.
- b. Date the prescription is filled.
- c. Prescription number.
- d. Indication as to whether the prescription is new or a refill.
- e. NDC number for the drug dispensed.
- f. Quantity of the drug dispensed.
- g. Number of days of drug therapy provided by the drug as dispensed.
- h. Patient name.
- i. Patient address including street address, city, state, and ZIP code.

## PHARMACY BOARD[657](cont'd)

- j.* Patient date of birth.
- k.* Patient gender.
- l.* Prescriber DEA number.
- m.* Date the prescription was issued by the prescriber.
- n.* Method of payment as either third-party payer or patient cash payment.

**37.3(3) Reporting periods.** A record of each reportable prescription dispensed shall be submitted by each dispenser pursuant to the following schedule. Records may be submitted with greater frequency than required by this schedule. This schedule defines minimum report frequency.

- a.* Records of reportable prescriptions dispensed between the first and the fifteenth day of a month shall be submitted no later than the twenty-fifth day of the month.
- b.* Records of reportable prescriptions dispensed between the sixteenth and the last day of a month shall be submitted no later than the tenth day of the following month.

**37.3(4) Transmission methods.** Prescription information shall be transmitted using one of the following methods:

- a.* Data upload to a reporting Web site via a secure Internet connection. The PMP administrator will provide dispensers with initial secure login and password information. Dispensers will be required to register on the reporting Web site prior to initial data upload.

- b.* Electronic media including CD-ROM, DVD, or diskette, accompanied by a transmittal form identifying the dispenser submitting the electronic media, the number of prescription records included on the media, and the individual submitting the media.

- c.* If a dispenser does not have an automated record-keeping system capable of producing an electronic report as provided in this rule, the dispenser may submit prescription information on the industry standard universal claim form. The dispenser may complete and submit the claim form on the reporting Web site or, if the dispenser does not have Internet access, the completed paper claim form may be submitted.

- d.* Chain pharmacies and pharmacies under shared ownership may submit combined data transmissions on behalf of all facilities by utilizing the secure FTP procedure.

**37.3(5) Zero reports.** If a dispenser has not been identified as exempt from reporting to the PMP and the dispenser did not dispense any reportable prescriptions during a reporting period, the dispenser shall submit a zero report via the established reporting Web site. If such a dispenser does not have Internet access, the dispenser shall notify the PMP administrator via mail or facsimile transmission that the dispenser did not dispense any reportable prescriptions during the reporting period. The schedule identified in subrule 37.3(3) shall determine timely submission of zero reports.

**657—37.4(124) Access to database information.** Prescription information submitted to the board for inclusion in the PMP database shall be privileged and strictly confidential and not subject to public or open records laws. All information contained in the PMP database, including records of requests for PMP information, shall be privileged and strictly confidential and not subject to public or open records laws. The board, council, and PMP administrator shall maintain procedures to ensure the privacy and confidentiality of patients, prescribers, dispensers, practitioners, and patient information collected, recorded, transmitted, and maintained in the PMP database and to ensure that program information is not disclosed to persons except as provided in this rule.

**37.4(1) Prescribers and pharmacists.** A health care practitioner authorized to prescribe or dispense controlled substances may obtain PMP information regarding the practitioner's patient, or a patient seeking treatment from the practitioner, for the purpose of providing patient health care.

- a.* Prior to being granted access to PMP information, a practitioner shall submit a request for registration and program access. A practitioner with Internet access may register via a secure Web site established by the board for that purpose. A practitioner without Internet access shall submit a written registration request on a form provided by the PMP administrator. The PMP administrator shall take reasonable steps to verify the identity of a practitioner and to verify a practitioner's credentials prior to providing a practitioner with a secure login and initial password. Except in an emergency when the patient would be placed in greater jeopardy by restricting PMP information access to the practitioner, a

## PHARMACY BOARD[657](cont'd)

registered practitioner shall not share the practitioner's secure login and password information and shall not delegate PMP information access to another health care practitioner or to the practitioner's agent.

*b.* A practitioner with Internet access may submit a request for PMP information via a secure Web site established by the board for that purpose. The requested information shall be provided to the requesting practitioner in a format established by the board and shall be delivered via the secure Web site.

*c.* A practitioner without Internet access may submit to the PMP administrator a written request for PMP information via mail or facsimile transmission. The written request shall be in a format established by the board and shall be signed by the requesting practitioner. Prior to processing a written request for PMP information, the PMP administrator shall take reasonable steps to verify the request, which may include but not be limited to a telephone call to the practitioner at a telephone number known to be the number for the practitioner's practice.

*d.* A practitioner who requests and receives PMP information consistent with the requirements and intent of these rules may provide that information to another practitioner who is involved in the care of the patient who is the subject of the information. Information from the PMP database remains privileged and strictly confidential. Such disclosures among practitioners shall be consistent with these rules and federal and state laws regarding the confidentiality of patient information. The information shall be used for medical or pharmaceutical care purposes.

**37.4(2) *Regulatory agencies and boards.*** Professional licensing boards and regulatory agencies that supervise or regulate a health care practitioner or that provide payment for health care services shall be able to access information from the PMP database only pursuant to an order, subpoena, or other means of legal compulsion relating to a specific investigation of a specific individual and supported by a determination of probable cause.

*a.* A director of a licensing board with jurisdiction over a practitioner who seeks access to PMP information for an investigation shall submit to the PMP administrator in a format established by the board a written request via mail, facsimile, or personal delivery. The request shall be signed by the director and shall be accompanied by an order, subpoena, or other form of legal compulsion establishing that the request is supported by a determination of probable cause.

*b.* A director of a regulatory agency with jurisdiction over a practitioner or with jurisdiction over a person receiving health care services pursuant to one or more programs provided by the agency who seeks access to PMP information for an investigation shall submit to the PMP administrator in a format established by the board a written request via mail, facsimile, or personal delivery. The request shall be signed by the director and shall be accompanied by an order, subpoena, or other form of legal compulsion establishing that the request is supported by a determination of probable cause.

**37.4(3) *Law enforcement agencies.*** Local, state, and federal law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of any state or federal law relating to controlled substances shall be able to access information from the PMP database by order, subpoena, or other means of legal compulsion relating to a specific investigation of a specific individual and supported by a determination of probable cause. A law enforcement officer shall submit to the PMP administrator in a format established by the board a written request via mail, facsimile, or personal delivery. The request shall be signed by the requesting officer or the officer's superior. The request shall be accompanied by an order, subpoena, or warrant issued by a court or legal authority that requires a determination of probable cause and shall be processed by the PMP administrator. A report identifying PMP information relating to the specific individual identified by the order, subpoena, or warrant may be delivered to the law enforcement officer via mail or alternate secure delivery.

**37.4(4) *Patients.*** A patient or the patient's agent may request and receive PMP information regarding prescriptions reported to have been dispensed to the patient.

*a.* A patient may submit a signed, written request for records of the patient's prescriptions dispensed during a specified period of time. The request shall identify the patient by name, including any aliases used by the patient, and shall include the patient's date of birth and gender. The request shall also include any address where the patient resided during the time period of the request and the patient's current address and daytime telephone number. A patient may personally deliver the request

## PHARMACY BOARD[657](cont'd)

to the PMP administrator or authorized staff member at the offices of the board located at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688. The patient will be required to present current government-issued photo identification at the time of delivery of the request. A copy of the patient's identification shall be maintained in the records of the PMP.

*b.* A patient who is unable to personally deliver the request to the board offices may submit a request via mail or commercial delivery service. The request shall comply with all provisions of paragraph "a" above, and the signature of the requesting patient shall be witnessed and the patient's identity shall be attested to by a currently registered notary public. In addition to the notary's signature and assurance of the patient's identity, the notary shall certify a copy of the patient's government-issued photo identification and that certified copy shall be submitted with the written request. The request shall be submitted to the Iowa Board of Pharmacy at the address identified in paragraph "a."

*c.* In the case of a patient whose health care decisions have been legally transferred to the patient's agent, the patient's agent may submit a request on behalf of the patient pursuant to the appropriate procedure in paragraph "a" or "b." In addition to the patient's information, the patient's agent shall be identified by name, current address, and telephone number. In lieu of the patient's signature and identification, the patient's agent shall sign the request and the government-issued photo identification shall identify the patient's agent. The patient's agent shall include a certified copy of the legal document that transferred control over decisions regarding the patient's health care to the patient's agent.

**37.4(5) Court orders and subpoenas.** The PMP administrator shall provide PMP information in response to court orders and county attorney or other subpoenas issued by a court upon a determination of probable cause.

**37.4(6) Statistical data.** The PMP administrator, following review and approval by the patients rights committee, may provide summary, statistical, or aggregate data to public or private entities for statistical, research, or educational purposes. Prior to the release of any such data, the PMP administrator shall remove any information that could be used to identify an individual patient, prescriber, dispenser, practitioner, or other person who is the subject of the PMP information or data.

**37.4(7) PMP administrator access.** Other than technical, error, and administrative function reports needed by PMP support staff to determine that records are received and maintained in good order, any other reports concerning the information received from dispensers shall only be prepared at the direction of the board, the council, or the PMP administrator. The board and the council may compile statistical reports from PMP information for use in determining the advisability of continuing the PMP and for use in preparing required reports to the governor and the legislature. The reports shall not include information that would identify any patient, prescriber, dispenser, practitioner, or other person who is the subject of the PMP information or data.

**657—37.5(124) Fees.** The board may charge a fee and recover costs incurred for the provision of PMP information, including statistical data, except that no fees or costs shall be assessed to a dispenser for reporting to the PMP or to a practitioner for querying the PMP regarding a practitioner's patient. Any fees or costs assessed by the board shall be considered repayment receipts as defined in Iowa Code section 8.2.

**657—37.6(124) PMP information retained.** All dispenser records of prescriptions reported to the PMP shall be retained by the PMP for a period of four years following the date of the record. All records of access to or query of PMP information shall be retained by the PMP for a period of four years following the date of the record. At least semiannually, all PMP information identified as exceeding that four-year period shall be deleted from the PMP and discarded in a manner to maintain the confidentiality of the PMP information and data. Statistical data and reports from which all personally identifiable information has been removed or which do not contain personally identifiable information as provided in subrules 37.4(6) and 37.4(7) may be retained by the PMP for historical purposes.

**657—37.7(124) Information errors.** Any person who believes that PMP information about that person is false or in error shall submit a written statement to the PMP administrator. The statement shall

## PHARMACY BOARD[657](cont'd)

identify the information the person believes to be false or in error and the reason the individual believes the information to be false or in error. The PMP administrator may examine the information identified in the statement and may request the assistance of the board's compliance staff to determine whether or not the PMP information is accurate. Prior to initiating any action to correct, delete, or amend any PMP information, the PMP administrator shall submit the statement and the resulting report to the patients rights committee for review and approval of the recommended action. If correction, deletion, or amendment of any PMP information is authorized, that action shall be accomplished within 72 hours of the committee's decision. The PMP administrator shall respond, in writing, to the person who submitted the statement charging that the PMP information was false or in error. The response shall identify the action approved by the committee.

**657—37.8(124) Dispenser and practitioner records.** Nothing in these rules shall apply to records created or maintained in the regular course of business of a pharmacy or health care practitioner. All information, documents, or records otherwise available from pharmacies or health care practitioners shall not be construed as immune from discovery or use in any civil proceedings merely because the information contained in those records was reported to the PMP in accordance with these rules.

**657—37.9(124) Prohibited acts.** The PMP administrator shall report to a dispenser's or a practitioner's professional licensing board any known violation of the confidentiality provisions or the reporting requirements of the law and these rules for which the dispenser or practitioner is subject to disciplinary action.

**37.9(1) Confidentiality.** A pharmacy or a practitioner who knowingly fails to comply with the confidentiality provisions of the law or these rules or who delegates PMP information access to another individual, except in an emergency situation as provided in paragraph 37.4(1) "a," is subject to disciplinary action by the appropriate professional licensing board. The PMP administrator or a member of the program staff who knowingly fails to comply with the confidentiality provisions of the law or these rules is subject to disciplinary action by the board.

**37.9(2) Dispenser reporting.** A dispenser or a pharmacist who fails to comply with the reporting requirements of the law or these rules may be subject to disciplinary action by the board.

These rules are intended to implement Iowa Code sections 124.551 to 124.558.

**ARC 7675B**

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 1351.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 15, "Swimming Pools and Spas," Iowa Administrative Code.

Federal legislation entitled "The Virginia Graeme Baker Pool and Spa Safety Act" (VGB) (H.R. 6, 303-309, Title XIV) was signed into law on December 19, 2007. The legislation requires that the main drains and other outlets of public swimming pools and spas be modified within one year to prevent entrapment incidents. Iowa's rules relating to swimming pools and spas need to be amended to include the requirements of VGB to enable the Department and its local contractors to enforce the provisions of VGB.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

These proposed amendments were distributed among interested parties, including public health agencies, municipal swimming pool operators, motel/hotel owner organizations, pool builders, engineers, and architects, in February 2009.

Any interested person may make written suggestions or comments on these amendments on or before April 28, 2009. Written materials should be directed to Michael Magnant, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-4529; E-mail [mmagnant@idph.state.ia.us](mailto:mmagnant@idph.state.ia.us).

There will be a public hearing on April 28, 2009, from 1 to 2 p.m. in Room 513, Lucas State Office Building, 321 East 12th Street, Des Moines, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Public Health and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 135I.

The following amendments are proposed.

ITEM 1. Amend subrule **15.3(1)**, definition of “Equalizer,” as follows:

“*Equalizer*” means an arrangement including a pipe from an opening below the water level in a swimming pool or spa to the body of a skimmer and a normally closed valve at the skimmer body. The arrangement is designed to automatically prevent air from being drawn into the pump when the water level drops below the skimmer inlet. The equalizer opening in a swimming pool or spa is a fully submerged outlet.

ITEM 2. Adopt the following **new** definitions of “Field fabricated,” “Flow rating,” “Fully submerged outlet,” “Outlet system” and “Unblockable” in subrule **15.3(1)**:

“*Field fabricated*,” when applied to a sump or a cover/grate for a fully submerged outlet, means constructed on site with conventional building materials or of a size and shape different from readily available commercial sumps or cover/grates.

“*Flow rating*,” when applied to the cover/grate for a fully submerged outlet, means the maximum flow rate in gpm through the cover/grate that will not cause body or hair entrapment as determined by the test methods in the ASME standard.

“*Fully submerged outlet*” means an outlet that is completely under water when the water is at the normal operating level.

“*Outlet system*” means an arrangement of components associated with one or more connected fully submerged outlets including the cover/grate(s), the sump(s), the piping, and the pump(s) if one or more pumps are directly connected to the outlet(s).

“*Unblockable*,” when applied to a cover/grate for a fully submerged outlet, means a size and shape that cannot be fully covered by an 18-inch by 23-inch mat with 4-inch-diameter rounded corners and the differential pressure generated by the flow through the uncovered open area is not enough to cause body entrapment. “Unblockable” is evaluated by the methods specified in the ASME standard.

ITEM 3. Adopt the following **new** abbreviation in subrule **15.3(2)**:

“*ASME standard*” means ASME/ANSI A112.19.8a-2008, “Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs.” The standard sets performance requirements and test methods for pool and spa fittings, covers and grates for physical strength, ultraviolet light resistance, and hair and body entrapment prevention. The standard can be purchased from ANSI by calling (212)642-4980 or at <http://webstore.ansi.org/>.

ITEM 4. Rescind paragraph **15.4(4)“h”** and adopt the following **new** paragraph in lieu thereof:

*h. Fully submerged outlets.* Each outlet, including the main drain(s), shall be designed to prevent user entrapment. A swimming pool shall be closed if the cover/grate of a fully submerged outlet is missing or broken.

(1) Each fully submerged outlet shall have a cover/grate that is listed for compliance with the requirements of the ASME standard by a listing agency approved by the department or that is certified for compliance by an engineer licensed in Iowa.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

1. The cover/grate for an outlet system with a single fully submerged outlet shall have a flow rating of at least 100 percent of the maximum system flow rate. The combined flow rating for the cover/grates for an outlet system with more than one fully submerged outlet shall be at least 200 percent of the maximum system flow rate.

The maximum system flow rate for a main drain system is at least the design filter flow rate, but may include play feature and water slide flow. The maximum system flow rate for other fully submerged outlets is the design flow rate of the pump(s) directly connected to the outlet system.

2. Fully submerged outlet cover/grates shall not be removable without the use of tools.

3. Purchase records and product information that demonstrate compliance shall be maintained by the facility for at least five years from the time the cover/grate is purchased. If a field fabricated cover/grate is certified for compliance to the ASME standard by an engineer licensed in Iowa, a copy of the certification letter shall be kept at the facility for at least five years from the certification date.

(2) A swimming pool with a single fully submerged outlet that is not unblockable and that is directly connected to a pump shall be closed if the outlet does not have a cover/grate that complies with the ASME standard.

If a swimming pool has two or more fully submerged outlets on a single surface that are all less than 3 ft apart on center, are not unblockable, and are directly connected to a pump, the swimming pool is considered to have a single fully submerged outlet.

(3) A swimming pool with a single fully submerged outlet that is not unblockable and that is directly connected to a pump shall be closed if the outlet system is not equipped with a safety vacuum release system that is listed for compliance with ASME/ANSI A112.19.17-2002, "Manufactured Safety Vacuum Release Systems (SVRS) for Residential and Commercial Swimming Pool, Spa, Hot Tub, and Wading Pool Suction Systems," by a listing agency approved by the department; or another vacuum release system approved by the department.

Purchase records and product information that demonstrate compliance shall be maintained by the facility for at least five years from the time the SVRS is purchased or another approved system is installed.

(4) In lieu of compliance with subparagraphs (1), (2) and (3) above, a fully submerged outlet in a swimming pool may be disabled with the approval of the department, except that an equalizer in a skimmer may be plugged without department approval. The management of the swimming pool shall submit to the department information including, but not necessarily limited to:

1. The area and volume of the pool;
2. The functional areas of the pool and the depths in those areas;
3. Detailed information about the inlet system, including the location of the inlets, the depth of the inlets, and the type of inlet fitting;
4. Detailed information about the overflow system, gutter or skimmer, number of skimmers, and pipe sizes;
5. Pump information and flow rates for the outlet system;
6. Filter type, number of filters, the size of the filter(s), and whether multiple filters are backwashed together or separately.

If the department approves the application to disable the outlet, the outlet valve shall be closed and the valve secured by removing the handle, by locking the handle closed, or by another method approved by the department. The outlet may be physically disconnected from the pump system at the option of the facility management.

ITEM 5. Amend paragraph **15.5(7)“d”** as follows:

*d. Main drain piping.* ~~The~~ If the main drains are connected to the recirculation system, the main drains and main drain piping shall be designed to convey at least 100 percent of the recirculation flow rate.

ITEM 6. Amend subparagraph **15.5(9)“a”(6)** as follows:

(6) If a swimming pool is not equipped with an automatic water level maintenance device, each skimmer that is a suction outlet shall have an operational equalizer. The equalizer opening in the

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

swimming pool shall be covered with a fitting listed by a listing agency approved by the department as meeting the requirements of ~~ANSI/ASME A112.19.8M-1987~~ the ASME standard.

ITEM 7. Rescind subrule 15.5(10) and adopt the following **new** subrule in lieu thereof:

**15.5(10) Main drain system.**

*a. Main drains.* Each swimming pool shall have a convenient means of draining the water from the pool for winterization and service.

*b. Main drains for recirculation.* If the main drain system is connected to the recirculation system, there shall be two or more main drains or a single main drain that is unblockable.

(1) Two main drains shall be at least 3 ft apart on center. If three or more main drains are installed, the distance between the drains farthest apart shall be at least 3 ft on center.

(2) Each main drain and its associated piping in a swimming pool shall be designed for the same flow rate. Multiple drains shall be plumbed in parallel, and the piping system shall be designed to equalize flow among the main drains.

(3) If one or two main drains are installed, each main drain cover/grate, sump and the associated piping shall be designed for at least 100 percent of the recirculation flow rate specified by 15.5(5) "b." If three or more main drains are installed, the combined flow rating of the cover/grates, the sumps and the associated piping shall be at least 200 percent of the recirculation flow rate. If water for water slides, fountains and play features is circulated through the main drain and overflow systems, the main drains shall be designed for the combined feature and recirculation flow.

(4) Manufactured main drain sumps shall be listed by a listing agency acceptable to the department for compliance with the ASME standard. Field fabricated sumps shall be designed in accordance with the ASME standard and shall be certified by an engineer licensed in Iowa.

(5) There shall be a control valve to adjust the flow between the main drain and the overflow system.

(6) Main drain covers. Each main drain shall be covered with a cover/grate that complies with the ASME standard.

1. The flow rating for each cover/grate shall comply with 15.5(10) "b"(3).

2. The mark of a listing agency acceptable to the department shall be permanently marked on the top surface of each manufactured cover/grate.

3. Field fabricated cover/grates shall be certified for compliance to the ASME standard by a professional engineer licensed in Iowa. A certificate of compliance shall be provided to the swimming pool owner and to the department.

4. The main drain cover/grate shall be designed to be securely fastened to the pool so that the cover/grate is not removable without tools.

*c. Feature outlets.* Where fully submerged outlets for play or decorative features or water slides are in the swimming pool, the outlets shall be designed in accordance with 15.5(10) "b."

ITEM 8. Rescind paragraph **15.5(14)"c."**

ITEM 9. Reletter paragraph **15.5(14)"d"** as **15.5(14)"c."**

ITEM 10. Amend paragraph **15.5(15)"f"** as follows:

*f. Main drains.* ~~A~~ The main drain system shall ~~be provided which complies~~ comply with the requirements of 15.5(10).

ITEM 11. Amend paragraph **15.5(17)"h"** as follows:

*h. Suction outlets.* If a fully submerged suction outlet is in a plunge pool or in a swimming pool, it shall be located away from normal water slide user traffic areas. ~~One of the following designs shall be used:~~ The suction outlet system shall be designed in accordance with 15.5(10) "b."

~~(1) Multiple outlets may be used. Outlets shall be at least 3 ft apart. The outlets shall be covered with grates or other protective covers approved by the department. Water velocity through the outlet covers shall not exceed 1½ ft/sec.~~

~~(2) The outlet shall have an area of at least 324 in<sup>2</sup>. The outlet shall be covered by a grate or other protective cover approved by the department. Water velocity through the outlet cover shall not exceed 1½ ft/sec.~~

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 12. Rescind and reserve paragraph **15.5(17)“i.”**

ITEM 13. Amend paragraph **15.5(19)“d”** as follows:

*d.* Spray pad drains shall be gravity outlets. At least two drains shall be provided, or a single drain with an area of at least 324 in<sup>2</sup> that is unblockable shall be provided. ~~The drain cover shall meet the requirements for a main drain cover in 15.5(10)“b.”~~

(1) The drain system and associated piping shall be designed for 125 percent of the flow into the spray pad (play feature and recirculation, as applicable).

(2) Each drain cover/grate shall be flush with the spray pad surface and shall have no opening wider than ½ inch.

(3) Each drain cover/grate shall be designed to be securely fastened to the spray pad so that the drain cover/grate is not removable without tools.

(4) Drain cover/grates that are exposed to foot traffic shall:

1. Have a slip-resistant surface; and

2. Support a 300-pound concentrated load when tested in accordance with the ASME standard, section 3.3. Structural strength shall be verified by documentation of test results from a testing agency approved by the department or by certification by an engineer licensed in Iowa; and

3. If the drain cover is exposed to sunlight, be resistant to ultraviolet light (UV) in accordance with the ASME standard, section 3.2.2. UV resistance shall be verified by documentation of test results from a testing agency approved by the department or by certification by an engineer licensed in Iowa.

ITEM 14. Amend paragraph **15.5(20)“g”** as follows:

*g.* Outlets for the leisure river propulsion system shall be designed ~~as main drains as specified in 15.5(10).~~ accordance with 15.5(10)“b.”

ITEM 15. Rescind paragraph **15.51(4)“f”** and adopt the following **new** paragraph in lieu thereof:

*f.* Fully submerged outlets. Each fully submerged outlet shall be designed to prevent user entrapment. A spa shall be closed if the cover/grate of a fully submerged outlet is missing or broken.

(1) For a spa constructed prior to May 13, 1998, each pump that draws water directly from a fully submerged outlet shall be connected to two or more outlets or a single outlet with an area of at least 144 in<sup>2</sup>.

(2) Each fully submerged outlet shall have a cover/grate that is listed for compliance with the requirements of the ASME standard by a listing agency approved by the department or that is certified for compliance by an engineer licensed in Iowa.

1. The cover/grate for an outlet system with a single fully submerged outlet shall have a flow rating of at least 100 percent of the maximum system flow rate. The combined flow rating for the cover/grates for an outlet system with more than one fully submerged outlet shall be at least 200 percent of the maximum system flow rate.

The maximum system flow rate is the design flow rate for the pump(s) directly connected to the outlet(s) in an outlet system. In the absence of better information, the maximum system flow rate is the capacity of the pump(s) at 50 feet TDH, based on the manufacturer's published pump curves.

2. Fully submerged outlet cover/grates shall not be removable without the use of tools.

3. Purchase records and product information that demonstrate compliance shall be maintained by the facility for at least five years from the time the cover/grate is purchased. If a field fabricated cover/grate is certified for compliance to the ASME standard by an engineer licensed in Iowa, a copy of the certification letter shall be kept at the facility for at least five years from the certification date.

(3) A spa with a single fully submerged outlet that is not unblockable and that is directly connected to a pump shall be closed if the outlet does not have a cover/grate that complies with the ASME standard.

If a spa has two or more fully submerged outlets on a single surface that are all less than 3 ft apart on center, are not unblockable, and are directly connected to a pump, the spa is considered to have a single fully submerged outlet.

(4) A spa with a single fully submerged outlet that is not unblockable and that is directly connected to a pump shall be closed if the outlet system is not equipped with a safety vacuum release system that is listed for compliance with ASME/ANSI A112.19.17-2002, “Manufactured Safety Vacuum Release

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Systems (SVRS) for Residential and Commercial Swimming Pool, Spa, Hot Tub, and Wading Pool Suction Systems,” by a listing agency approved by the department; or another vacuum release system approved by the department. Purchase records and product information that demonstrate compliance shall be maintained by the facility for at least five years from the time the SVRS is purchased or another approved system is installed.

(5) In lieu of compliance with subparagraphs (2), (3) and (4) above, a fully submerged outlet in a spa may be disabled with the approval of the department, except that an equalizer in a skimmer may be plugged without department approval. The management of the spa shall submit to the department information including, but not necessarily limited to:

1. The area and volume of the spa;
2. Detailed information about the inlet system, including the location of the inlets and the type of inlet fitting;
3. The number of skimmers and pipe sizes;
4. Pump information and flow rates for the outlet system; and
5. Filter type, number of filters, the size of the filter(s), and whether multiple filters are backwashed together or separately.

If the department approves the application to disable the outlet, the outlet valve shall be closed and the valve secured by removing the handle, by locking the handle closed, or by another method approved by the department. The outlet may be physically disconnected from the pump system at the option of the facility management.

ITEM 16. Amend paragraph **15.52(9)“e”** as follows:

*e.* Equalizers. If a spa is not equipped with an automatic water level maintenance device, each skimmer shall have an operational equalizer. The equalizer opening in the spa shall be covered with a fitting listed by a listing agency approved by the department as meeting the requirements of ~~ANSI/ASME A112.19.8M-1987~~ the ASME standard.

ITEM 17. Rescind subrule 15.52(10) and adopt the following **new** subrule in lieu thereof:

**15.52(10) Main drain system.** Each spa shall have a convenient means of draining the water from the spa for service. Spa main drains may be on the sidewall of a spa near the spa bottom.

*a.* Suction outlets. If a spa pump is directly connected to a main drain or another fully submerged outlet, the pump shall be connected to two or more fully submerged outlets or to a single fully submerged outlet that is unblockable. The recirculation system and the agitation system may use the same fully submerged outlet(s).

(1) Two fully submerged outlets that are directly connected to one or more pumps in the same outlet system shall be at least 3 ft apart on center or on different spa surfaces. If three or more fully submerged outlets that are all directly connected to one or more pumps in the same outlet system are installed, the distance between the outlets farthest apart shall be at least 3 ft on center or the outlets shall be installed on different spa surfaces.

(2) If there is only one fully submerged outlet in an outlet system, the flow rating of the outlet cover/grate, sump and the associated piping shall be at least 100 percent of the maximum system flow rate. If two or more fully submerged outlets are installed in an outlet system, the combined flow rating of the cover/grates, the sumps and the associated piping shall be at least 200 percent of the maximum system flow rate. Multiple outlets in an outlet system shall be plumbed in parallel.

The maximum system flow rate for the recirculation system is the flow rate specified in 15.52(5) “*b*” or the design flow rate, whichever is greater. The maximum system flow rate for the agitation system is the specified design flow rate. If a flow rate is not specified, the maximum system flow rate shall be the flow capacity of the pump(s) at 50 feet TDH, based on the manufacturer’s published pump curves.

*b.* Control valve. If a main drain is connected to the recirculation system, there shall be a control valve to adjust the flow between the main drain and the overflow system.

*c.* Main drain covers. Each main drain or other fully submerged outlet shall be covered with a cover/grate that is listed as complying with the requirements of the ASME standard by a listing agency approved by the department. A listed cover/grate shall be used in accordance with its listing.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

- (1) The flow rating for the cover/grate(s) shall comply with 15.52(10)“a”(2).
- (2) The mark of a listing agency acceptable to the department shall be permanently marked on the top surface of each manufactured cover/grate.
- (3) Field fabricated cover/grates shall be certified for compliance to the ASME standard by a professional engineer licensed in Iowa. A certificate of compliance shall be provided to the spa owner and to the department.
- (4) The fully submerged outlet cover/grate shall be designed to be securely fastened to the spa so that the cover/grate is not removable without tools.
  - d. For outlet systems with manufactured sumps, the sumps shall be listed by a listing agency acceptable to the department for compliance with the ASME standard. Field fabricated sumps shall be designed in accordance with the ASME standard and shall be certified by an engineer licensed in Iowa.

**ARC 7669B****PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code chapter 135.11, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 73, "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)," Iowa Administrative Code.

The purpose of the proposed amendment is to be consistent with federal changes to the requirements of the WIC food package that become effective October 1, 2009, and that will affect 74,500 Iowa WIC participants. The amendment also reserves the Department's right to limit the number of foods for the WIC-approved food list based on accessibility, availability, retail value of product, USDA recommendations, increased number of WIC participants, and change in appropriation of funds.

Any interested person may make written or oral suggestions or comments on the amendment on or before April 28, 2009. Comments should be directed to Julie McMahan, Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Fourth Floor, Des Moines, Iowa 50319-0075; telephone (515)281-3104; or fax (515)281-4913.

There will also be a public hearing on April 28, 2009, from 9 to 10 a.m. utilizing the Iowa Communications Network (ICN). The hearing will be conducted from 15 sites. Please call (515)281-4919 to schedule a time to speak at the hearing and to confirm the availability of the requested site. The hearing will originate from the Iowa Communications Network (ICN) Room, Second Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, and will be accessible from the following ICN sites:

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Iowa State University - 1  
Lagomarcino Hall, Room N147  
Corner of Knoll Road and Pamel Drive  
Ames

Mississippi Bend Area Education Agency - 9  
ICN Room  
729 21st Street  
Bettendorf

Cedar Falls Public Library  
Second Floor Meeting Room  
524 Parkade  
Cedar Falls

Iowa School for the Deaf - 1  
Careers Building, Second Floor ICN Room  
3501 Harry Langdon Boulevard  
Council Bluffs

Keystone Area Education Agency - 1  
Room 2  
2310 Chaney Road  
Dubuque

Ft. Dodge Air National Guard  
Room 100  
1649 Nelson Avenue  
Ft. Dodge

Iowa Valley Community College  
Room 121  
123 6th Avenue West  
Grinnell

Hiawatha Public Library  
Meeting Room  
150 West Willman Street  
Hiawatha

North Iowa Area Community College - 1  
Room 106  
500 College Drive  
Mason City

Mount Pleasant Treatment Center  
1200 East Washington  
Mount Pleasant

Osceola Public Library  
ICN Room  
300 S. Filmore Street  
Osceola

Great Prairie Area Education Agency - 1  
2814 N. Court Street  
Ottumwa

Northwest Area Education Agency - 12  
Room 206  
1520 Morningside Avenue  
Sioux City

Iowa Lakes Community College  
ICN Room  
800 21st Street  
Spirit Lake

This amendment is intended to implement Iowa Code section 135.11.  
The following amendment is proposed.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Amend subrule 73.9(3) as follows:

**73.9(3) Criteria for approving products for inclusion in the WIC food package.**

- a. A product shall meet the federal regulations governing the WIC food package.
- b. Variety in the food package is encouraged to increase the likelihood of products being used as well as and to allow participants to exercise responsibility in shopping.
- c. Changes to the approved food list take effect on October 1 in years when new vendor contracts are signed. Inquiries from food companies about new and continuing products must be received prior to February 1 of the year vendor contracts expire to be guaranteed consideration. The state reserves the right to change the food list more frequently if necessary.
- d. Cereals shall meet federal guidelines for ~~sugar and iron~~ content and shall also meet the following conditions:
  - (1) They ~~shall be~~ are carried by current Iowa WIC-approved vendors.
  - (2) The product form and marketing approach ~~shall be~~ are consistent with the promotion of good nutrition and education.
  - (3) If a group of cereals from one manufacturer have similar names and package designs and some do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants.
  - (4) Ready-to-eat cold cereals are ranked by the six major distributors to Iowa ~~WIC vendors~~ grocery retailers based on volume of total sales. Hot cereals are ranked in the same way. Multiple ~~varieties container sizes~~ of a single ~~brand~~ of cereal variety shall be considered as one ~~brand~~ variety for the purposes of constructing this ranking. The ~~state office~~ department compiles data from all distributors to develop an overall ranking or ranked list. ~~The top 16 name brand cold cereals, the top 3 varieties of private label (store) brand cold cereals and the top 2 hot cereals that qualify are selected.~~ At least half of the cereals authorized on the WIC-approved food list must have whole grain as the primary ingredient by weight and must meet labeling requirements for making a health claim as a whole grain food with moderate fat content. The department reserves the right to limit the number of approved cereals for administrative efficiency.
  - (5) Product ~~shall have~~ has been available in retail grocery stores in Iowa for one year prior to the effective date of inclusion in the WIC-approved food list.
- e. Juices shall meet the federal guidelines for vitamin C content and all of the following conditions:
  - (1) Juices ~~shall be~~ are 100 percent juice and contain no added sugar, sweeteners or artificial sweeteners.
  - (2) The brand ~~shall be~~ is carried by current Iowa WIC-approved vendors. Juices are ranked by the six major distributors to Iowa ~~WIC vendors~~ grocery retailers based on volume of total sales. ~~The top two name brands of each flavor of juice (e.g., tomato, orange, grapefruit, grape, apple, or blended) and form of juice (single strength or concentrated) that meet the selection criteria will be approved. Any private-label (store) brands that meet the selection criteria will also be approved.~~ considered.
  - (3) The product form and marketing approach ~~shall be~~ are consistent with the promotion of good nutrition and education.
  - (4) If a group of juices from one manufacturer have similar names and package designs and some do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants. Single-strength and concentrated varieties of juice with the same brand name will be evaluated separately.
  - (5) Product ~~shall have~~ has been available in retail grocery stores in Iowa for one year prior to the effective date of inclusion in the WIC-approved food list.
  - (6) ~~Concentrated~~ Fruit juices must be single flavors of nonrefrigerated juice.
- f. The following conditions apply to dairy products:
  - (1) To qualify, brands of whole, ~~low fat,~~ reduced fat, or fat-free milk marketed in Iowa must contain or be fortified with vitamins A and D to meet the federal standards. The department reserves the right to disqualify brands ~~that significantly exceed the average price of other brands or which are marketed as providing additional health benefits~~ which have a retail value of 115 percent or higher than the state average for this product.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

(2) Fluid milk with added bacterial cultures or enzymes, including but not limited to sweet acidophilus or lactose-reduced milk, may qualify. Brands are approved by the department on a case-by-case basis.

(3) All brands of natural cheese designated in the USDA WIC regulations qualify. The cheese shall have no added flavors (e.g., smoke flavoring, peppers, wine).

g. All brands of dried beans or peas are approved whether packaged or purchased in bulk; however, no mixes are allowed.

h. Any brand of peanut butter qualifies as long as it does not contain other ingredients such as jelly. Brands may be either refrigerated or nonrefrigerated.

i. Eggs shall be fresh, Grade A large ~~or smaller~~ chicken eggs. ~~Specialty eggs, including those with health or nutrition claims and significantly higher prices,~~ Eggs which have a retail value of 115 percent or higher than the state average for this product shall not be approved.

j. Any brand of tuna or salmon qualifies if it is either water- or oil-packed, in cans or pouches, chunked, solid, or flaked, ~~and is in six ounce minimum size containers.~~ Tuna Fish packaged with other items such as crackers, or relish or other flavorings may not be purchased. Albacore tuna is not allowed.

k. Commercial infant formula shall meet the following conditions:

(1) It ~~shall have~~ is registered with the Food and Drug Administration as complying with the legal definition of infant formula.

(2) It ~~shall comply~~ complies with the calorie and iron content prescribed by the federal WIC regulations.

(3) It ~~has been~~ is approved by the USDA for use in the WIC program.

(4) The product form and marketing approach ~~shall be~~ are consistent with the promotion of good nutrition and education.

(5) All of the formula marketed under ~~that one~~ label shall meet all standards. If a similar, nonqualifying formula is marketed along with a qualifying formula, participants may be easily confused. Therefore, the qualifying formula shall not be approved.

~~(6) "Special formulas," as described in the regulations, must be approved by the USDA.~~

l. At least two whole grain options that meet federal guidelines will be provided.

m. Infant food fruits, vegetables and meats must meet the federal guidelines.

n. Fresh, frozen, and canned vegetables and fruits that meet federal guidelines will be available for purchase with cash value vouchers specifically for fruits and vegetables.

o. Soy beverages shall meet federal guidelines.

p. Products will be evaluated for use in the Iowa WIC program based on nutrient content, packaging, container size, labeling, availability to wholesale distributors, cost and participant preference. The state reserves the right to limit the number of foods for the WIC-approved food list based on accessibility, availability, retail value of product, USDA recommendations, increased number of WIC participants, changes in appropriation of funds and administrative efficiency.

~~q.~~ In addition to the criteria specified above, the department reserves the right to further restrict the number of brands of any products in order to contain the cost of the food package through competitive procurement of rebate contracts or other similar means.

r. The department reserves the right to discontinue specific brand names and products if the cost is 115 percent or higher than the state average for that particular product.

**ARC 7674B****UTILITIES DIVISION[199]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, and 476.2, the Utilities Board (Board) gives notice that on March 12, 2009, the Board issued an order in Docket No. RMU-2009-0002, In re: Notification Requirements for Certificated Local Exchange Companies [199 IAC 22.2(9)], "Order Commencing Rule Making," that proposes a new subrule that establishes notification requirements specifically for certificated local exchange carriers when loss of service to customers meets certain criteria. The Board is proposing the new subrule based upon its experience since the adoption of the existing notification requirements in March 2008. In those requirements, the Board adopted notification standards for all communications companies, including wireless communications companies, that mirrored the notification requirements of the Federal Communications Commission (FCC). Over the past year, in most cases the Board has not received immediate notification of events during which there has been a significant loss of communications service to customers. Notification of these events has often come hours or even days after the service disruption began, and in some cases service had already been restored. The primary reasons for the lack of timely notice is that reporting did not occur until the outage had met the FCC threshold for number of lost call minutes or notification was not made at the same time that it was sent to the FCC.

In the proposed new subrule, the Board establishes standards for notification that should provide more timely notice of outages. Timely notice of significant outages is needed to meet the Board's responsibility to keep local and state emergency management agencies and the Governor's office informed of these events. The order commencing rule making can be found using the Board's electronic filing system (EFS) Web site at <http://efs.iowa.gov>.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendment. The statement must be filed on or before April 28, 2009. The statement should be filed electronically through the EFS. Instructions for making an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>. Any person who does not have access to the Internet may file comments on paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments shall be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2), clearly state the author's name and address, and make specific reference to this docket. All paper communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

An oral presentation to receive oral comments on the proposed amendment will be held at 10 a.m. on May 11, 2009, in the Board's hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

This amendment is intended to implement Iowa Code sections 17A.4, 476.1, and 476.2.

The following amendment is proposed.

Adopt the following **new** subrule 22.2(9):

**22.2(9) Emergency outage reporting requirements for certificated local exchange carriers.** Certificated local exchange carriers shall notify the board as soon as practical and within at least two hours after the carrier learns of an outage that meets the criteria in this subrule by calling the board duty officer at 515-745-2332 or by sending an electronic message to the duty officer at

## UTILITIES DIVISION[199](cont'd)

IUBDutyOfficer@iub.state.ia.us. Notification shall be made when there is a loss of service that is projected to result in or results in the following:

- a.* Loss of service of 20 percent or more of a certificated local exchange carrier's access lines in a local exchange or 250 customers, whichever is greater, for more than two hours.
- b.* Loss of service to all of a certificated local exchange carrier's customers in an exchange.
- c.* Loss of service for more than two hours due to failure of communications equipment that prevents customers in an exchange from making outbound calls.
- d.* Any complete loss of access to 911 services in a community or exchange.
- e.* Any other loss of service, or anticipated loss of service, for more than two hours considered significant by the certificated local exchange carrier, including loss of service caused by a natural or man-made event.

## ARC 7709B

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.105 and 15.106, the Department of Economic Development adopts new Chapter 27, "Neighborhood Stabilization Program," Iowa Administrative Code.

These rules are intended to implement the newly authorized Neighborhood Stabilization Program through the U.S. Department of Housing and Urban Development. The Neighborhood Stabilization Program funds were authorized by the Housing and Economic Recovery Act of 2008 as an adjunct to the Community Development Block Grant Program.

The rules describe eligibility requirements, establish application review and approval procedures, and describe fund allocation.

The IDED Board adopted the rules on March 19, 2009.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest because the federal regulations governing the program require that all funding be obligated within 18 months. In order to meet this deadline, communities will need to begin their activities as soon as possible. In most cases, the activities will entail acquiring property, rehabilitating the property, and reselling it. These activities are difficult to accomplish in a short period of time.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of these rules should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator on March 20, 2009. These rules confer a benefit on the public by providing financial assistance for the repair and redevelopment of properties within the recipient communities.

These rules are also published herein under Notice of Intended Action as **ARC 7710B** to allow for public comment.

These rules became effective on March 20, 2009.

These rules are intended to implement Iowa Code sections 15.108(11) and 15.109 and the Housing and Economic Recovery Act of 2008.

The following amendment is adopted.

Adopt the following new 261—Chapter 27:

CHAPTER 27  
NEIGHBORHOOD STABILIZATION PROGRAM

**261—27.1(15) Purpose.** The purpose of the neighborhood stabilization program is to prevent or reduce the decline of neighborhoods caused by abandoned and foreclosed homes, primarily by providing assistance for the redevelopment of the abandoned and foreclosed properties.

**261—27.2(15) Definitions.** When used in this chapter, unless the context otherwise requires:

"Act" or "HERA" means Title III of Division B of the Housing and Economic Recovery Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009.

"Activity" means a discrete category of work as determined to be eligible under program guidelines.

"Blighted structure" means a structure exhibiting objectively determinable signs of deterioration sufficient to constitute a threat to public health, safety or welfare.

"CDBG" means the community development block grant program, authorized by Title I of the Housing and Community Development Act of 1974, as amended as of February 28, 2009.

"Contract" means the document executed between IDED and a recipient and all other instruments or documents executed by a recipient or otherwise required in connection with the contract, including the NSP plan or application together with any related submittal documents.

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

*“Entitlement community”* means principal cities of metropolitan statistical areas (MSAs); other metropolitan cities with populations of at least 50,000; and qualified urban counties with populations of at least 200,000 (excluding the population of entitled cities).

*“Foreclosed property”* means a home or residential property for which any mortgage or tax foreclosure with respect to such property is complete, and the title of such property has transferred to the appropriate person as determined under the mortgage or tax foreclosure proceeding.

*“Home”* means any type of permanent residential dwelling unit including, but not limited to, detached single-family structures, townhouses, condominium units, multifamily rental apartments (covering the entire property), and manufactured homes which are treated under state law as real estate and not personal property.

*“HUD”* means the federal Department of Housing and Urban Development.

*“IDED”* means the Iowa department of economic development established in Iowa Code chapter 15.

*“Land bank”* means any governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of homes and residential properties that have been foreclosed upon.

*“Low-income household”* means a household earning no more than 50 percent of the area median income as defined by HUD.

*“Low-income person”* means a member of a low-income household as defined above.

*“Low-, moderate-, and middle-income household”* or *“LMMH”* means a household earning no more than 120 percent of the area median income as defined by HUD.

*“Low-, moderate-, and middle-income person”* means a member of a low-, moderate-, and middle-income household as defined above.

*“Non-entitlement community”* means a unit of general local government which does not receive CDBG funds directly from HUD as part of the entitlement program (entitlement cities and urban counties). Non-entitlement areas are cities with populations of less than 50,000 (except cities that are designated principal cities of metropolitan statistical areas) and counties with populations of less than 200,000.

*“Residential property”* means, collectively, homes and vacant land currently designated for residential use, such as through a zoning ordinance.

**261—27.3(15) Program eligibility.**

**27.3(1) Eligible applicants.** Eligible applicants are those communities within the state with the greatest need, as determined by IDED using the methodology specified by HUD, which would include the following factors: areas with the greatest percentage of home foreclosures, areas with the highest percentage of homes financed by a subprime mortgage-related loan, and areas likely to face a significant rise in the rate of home foreclosures.

**27.3(2) Eligible activities.** Eligible activities, as limited by federal law and regulation, are the following:

- a. Financing mechanisms for the purchase and redevelopment of foreclosed homes and residential properties, including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers;
- b. Purchase and rehabilitation of homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties;
- c. Establishment and operation of land banks for homes and residential properties that have been foreclosed upon;
- d. Demolition of blighted structures;
- e. Redevelopment of demolished or vacant properties.

**261—27.4(15) Allocation of funding.** IDED will allocate the available federal funding between the large entitlement communities and the smaller non-entitlement communities based on measurable statistics relating to the three factors required by federal law relating to the determination of need

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

as described in 27.3(1). After that division of funding has been determined, IDED will determine an amount to be allocated to each of the entitlement communities, based upon the need factors for each of the respective communities. If allocation results in an amount of funding to a community or communities that is too small to result in an effective program, IDED may reallocate those funds to the other entitlement communities according to the percentages calculated based on the need factors. The funding available to the smaller non-entitlement communities will be distributed on a competitive basis, upon receipt and review of applications from each community. The maximum award to a non-entitlement community will be \$1 million.

**261—27.5(15) Application procedures.**

**27.5(1) *Application procedures for entitlement communities.*** Eligible entitlement communities shall submit to IDED a neighborhood stabilization plan that provides details on their proposed activities, includes a project budget, and demonstrates compliance with federal rules and regulations governing the program.

**27.5(2) *Application procedures for non-entitlement communities.*** Non-entitlement communities requesting funds must complete an application similar in content to the plan submitted by the entitlement communities.

**27.5(3) *Application/plan contents.*** The plan submitted by the entitlement communities, and the application submitted by the non-entitlement communities, shall include at least the following information:

- a. General project description;
- b. Budget for all activities;
- c. Projected start and end dates;
- d. Demonstration of how the project will meet all federal requirements, including the requirements to benefit households with incomes of less than 120 percent of area median income and that at least 25 percent of the funding will benefit households with incomes of less than 50 percent of area median income;
- e. Targeted geographical area of the community for the proposed activities;
- f. Additional detail on each of the separate proposed activities.

**261—27.6(15) Plan and application review process.**

**27.6(1) *Entitlement communities.*** IDED will review each plan from an entitlement community to ensure that the proposed activities are eligible activities and that the plan as proposed is in conformance with federal law and regulations. Plans that meet both tests will be approved.

**27.6(2) *Non-entitlement communities.*** Applications from non-entitlement communities will be reviewed on a competitive basis. Each application will be reviewed, rated, and ranked by an IDED review committee on the following factors:

- a. Need for assistance;
- b. Impact of the proposed activities;
- c. Degree of targeting of the activities within the community;
- d. Timeliness of the proposed project;
- e. Degree to which green development concepts are incorporated into the proposal.

**261—27.7(15) Award process.** Upon award decisions, each community that submitted a plan or an application will be notified in writing of the department's decision. Successful applicants will be required to execute a contract with IDED, which will include the proposed activities and budget, the terms of fund disbursement, the reporting requirements, and the federal and state compliance requirements.

**261—27.8(15) Project management.**

**27.8(1) *Requests for funds.*** Recipients shall submit requests for funds in the manner and on forms prescribed by IDED.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

**27.8(2) *Record keeping and retention.*** Recipients shall retain all financial records, supporting documents and all other records pertinent to the NSP activities for five years after contract closeout. Representatives of IDED shall have access to all records belonging to or in use by recipients pertaining to NSP funds.

**27.8(3) *Performance reports and reviews.*** Recipients shall submit performance reports to IDED in the manner and on forms prescribed by IDED. Reports shall assess the use of funds and progress of activities. IDED may perform any reviews or field inspections necessary to ensure recipient performance.

**27.8(4) *Amendments to contracts.*** Any substantive change to a contract shall be considered an amendment. Such changes would include time extensions, budget revisions and significant alteration of the funded activities that change the scope, location, objectives or scale of the approved activity. Amendments must be requested in writing by a recipient and are not considered valid until approved in writing by IDED following the procedure specified in the contract between a recipient and IDED.

**27.8(5) *Contract closeout.*** Upon contract expiration, IDED will initiate contract closeout procedures.

**27.8(6) *Compliance with federal, state and local laws and regulations.*** Recipients shall comply with all applicable laws and rules, including the applicable federal CDBG and HERA regulations, any provisions of the Iowa Code governing activities performed under this program, and with applicable local regulations.

**27.8(7) *Remedies for noncompliance.*** At any time before contract closeout, IDED may, for cause, find that a recipient is not in compliance with the requirements of this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Reasons for a finding of noncompliance include, but are not limited to, the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations, or the lack of a continuing capacity of the recipient to carry out the approved activity in a timely manner.

**27.8(8) *Appeals process for findings of noncompliance.*** Appeals will be entertained in instances where it is alleged that IDED staff participated in a decision which was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals should be addressed to the division administrator of the division of community development. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The director will make the final decision on all appeals.

These rules are intended to implement Iowa Code sections 15.108(11) and 15.109 and the Housing and Economic Recovery Act of 2008.

[Filed Emergency 3/20/09, effective 3/20/09]

[Published 4/8/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.

**ARC 7708B**

## **ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts new Chapter 79, "Disaster Recovery Business Rental Assistance Program," Iowa Administrative Code.

These rules are intended to assist a business located in or planning to locate in a business rental space that was physically damaged by the 2008 natural disaster(s). This financial assistance will offset building rental lease payments for a maximum of six months, not to exceed a total award amount of \$50,000. In-home businesses are not eligible for funds pursuant to this chapter.

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

The rules describe the purpose of the program, provide program definitions, establish eligibility requirements and the maximum amount of financial assistance available, and provide for program administration.

The IDED Board adopted these rules on March 19, 2009.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest because Iowa communities are in immediate need of financial assistance directed towards business retention and creation in disaster-damaged buildings.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these rules should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator on March 20, 2009. These rules confer a benefit on the public by distributing funds to Iowa businesses as soon as possible. In addition, the rules are implemented on an emergency basis because communities are in immediate need of financial assistance directed towards business retention and creation in disaster-damaged buildings. These rules are intended to incentivize businesses to remain in or locate in disaster-damaged buildings as soon as possible.

These rules are also published herein under Notice of Intended Action as **ARC 7707B** to allow for public comment.

These rules became effective on March 20, 2009.

These rules are intended to implement Iowa Code section 15.109.

The following amendment is adopted.

Adopt the following **new** 261—Chapter 79:

## CHAPTER 79

## DISASTER RECOVERY BUSINESS RENTAL ASSISTANCE PROGRAM

**261—79.1(15) Purpose.** The purpose of the disaster recovery business rental assistance program is to provide financial assistance to a business located in or planning to locate in a business rental space that was physically damaged by the 2008 natural disaster(s). Assistance will be in the form of rental assistance to help offset building rental lease payments for a maximum of six months, not to exceed a total award amount of \$50,000. In-home businesses are not eligible for the funds pursuant to this chapter.

**261—79.2(15) Definitions.**

“*Administrative entity*” means a selected city that administers a local disaster recovery program or a council of government as established in Iowa Code section 28H.1.

“*Business*” means a corporation, a professional corporation, a limited liability company, a partnership, a sole proprietorship, or a nonprofit corporation.

“*Department*” means the Iowa department of economic development established by Iowa Code chapter 15.

“*Disaster-damaged space*” means a business rental space that was physically damaged by the 2008 natural disaster(s). This definition includes upper stories of a building that was physically damaged in the basement or ground floor, or both, as well as a building constructed at the same site to replace a building that was destroyed due to damage resulting from the 2008 natural disaster(s). In-home businesses are not eligible for funds pursuant to this chapter.

“*Physically damaged*” for the purpose of this program means physical damage caused by flooding, including overland flow, or physical damage caused by tornado. Damage caused by sanitary or storm sewer backup is not included unless the department determines that such damage was a direct result of the 2008 natural disaster(s).

**261—79.3(15) Eligible business; application review.**

**79.3(1)** An eligible business is a business that:

a. Is located in or planning to locate in a business rental space that was physically damaged by the 2008 natural disaster(s); and

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

*b.* Has entered into or intends to enter into a minimum one-year, market-rate lease.

**79.3(2)** Applications received from businesses located in or planning to locate in a building in which the only damage incurred was a result of sanitary or storm sewer backup are subject to review by the department to determine eligibility. Factors used by the department to determine eligibility include, but are not limited to, review of insurance claims filed, damage to critical infrastructure and review of prior sanitary or storm sewer backup.

**79.3(3)** Applications received from businesses located in or planning to locate in a building that is zoned residential are subject to review by the department to determine eligibility. Factors used by the department to determine eligibility include, but are not limited to, review of the rental lease agreement, business plan and community comprehensive plan.

**261—79.4(15) Eligible program activities; maximum amount of assistance.**

**79.4(1)** An eligible business may apply for rental assistance to help offset building rental lease payments for a maximum of six months.

**79.4(2)** The maximum amount of program funds available for rental assistance per business is the equivalent of six months' rent up to a maximum of \$50,000.

**261—79.5(15) Distribution of funds to administrative entities.**

**79.5(1)** *Types of financial assistance available.* An administrative entity shall provide financial assistance to an eligible business in compliance with the terms and conditions described in this rule. An administrative entity may award funds in the form of a forgivable loan to a business that has entered into a minimum one-year, market-rate lease agreement. A forgivable loan is a loan that will be forgiven if the business remains open for the duration of the six-month period for which rental assistance is awarded.

**79.5(2)** *Allocation of funds by an administrative entity.* Applications will be processed by an administrative entity. Funds will be distributed upon request to the department from an administrative entity. The department will process requests for funds as received from an administrative entity no more frequently than once per week per administrative entity.

**79.5(3)** *Program termination.* Funds for this program shall be available through April 30, 2010.

**261—79.6(15) Program administration; reporting requirements.** Each local administrative entity shall enter into a contract with an eligible business to provide assistance. The contract shall include terms and conditions that meet the requirements of these rules as well as provisions to require repayment if funds are not used in compliance with the program. Each local administrative entity shall provide oversight and contract administration to ensure that the recipients of program funds are meeting the contract requirements. Each local administrative entity shall collect data and submit reports to the department about the program in the form and content required by law.

These rules are intended to implement Iowa Code section 15.109.

[Filed Emergency 3/20/09, effective 3/20/09]

[Published 4/8/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.

**ARC 7667B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 92, "IowaCare," Iowa Administrative Code.

This amendment reflects the annual update in IowaCare premiums as required by Iowa Code section 249J.8. Premiums are recalculated annually based on changes in federal poverty income guidelines published each year by the U.S. Department of Health and Human Services. By law, the monthly

HUMAN SERVICES DEPARTMENT[441](cont'd)

premium shall not exceed one-twelfth of 5 percent of the member’s annual family income. Members whose family income is less than 100 percent of the federal poverty level pay no premium.

These recalculations have resulted in a premium increase of \$2, \$3 or \$4 per month. The new premium amounts will be applied to new applications and renewal applications. A member’s premium does not change during the member’s approved enrollment period. Because the income thresholds for each level also change due to the new poverty income guidelines, the premium may be moved to a lower level at renewal if the member’s income remains unchanged.

This amendment does not provide for waivers in specified situations because all households should be subject to the same sliding-scale premiums. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on March 11, 2009.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because this amendment simply reflects the implementation of an existing methodology that is already adopted in statute and rules.

The Department also finds that this amendment confers a benefit by avoiding confusion about the application of the rule. The amounts cited in 441—paragraph 92.7(1)“a” of the Iowa Administrative Code conform to the updated amounts that took effect April 1, 2009, based on paragraph 92.7(1)“b.” Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of the amendment is waived.

This amendment became effective April 1, 2009.

This amendment is intended to implement Iowa Code section 249J.8.

The following amendment is adopted.

Amend paragraph **92.7(1)“a”** as follows:

a. The monthly premium amount is based on the household’s countable monthly income as a percentage of the federal poverty level for a household of that size. Effective April 1, ~~2008~~ 2009, premium amounts based on this percentage are as follows:

When the household’s income is at or below:	Each member’s premium amount is:
100% of federal poverty level	\$ 0
110% of federal poverty level	<del>\$43</del> <u>\$45</u>
120% of federal poverty level	<del>\$47</del> <u>\$49</u>
130% of federal poverty level	<del>\$52</del> <u>\$54</u>
140% of federal poverty level	<del>\$56</del> <u>\$58</u>
150% of federal poverty level	<del>\$60</del> <u>\$63</u>
160% of federal poverty level	<del>\$64</del> <u>\$67</u>
170% of federal poverty level	<del>\$69</del> <u>\$72</u>
180% of federal poverty level	<del>\$73</del> <u>\$76</u>
190% of federal poverty level	<del>\$77</del> <u>\$81</u>
200% of federal poverty level	<del>\$82</del> <u>\$85</u>

[Filed Emergency 3/11/09, effective 4/1/09]

[Published 4/8/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.

**ARC 7700B****IOWA FINANCE AUTHORITY[265]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r,” the Iowa Finance Authority hereby amends Chapter 12, “Low-Income Housing Tax Credits,” Iowa Administrative Code.

These amendments update and replace the current Low Income Tax Credit Program Compliance Monitoring Manual with an updated compliance monitoring manual, which is incorporated by reference in rule 265—12.3(16).

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority’s general rules concerning waivers. The compliance monitoring manual is subject to state and federal requirements that cannot be waived. (See Internal Revenue Code Section 42 and Iowa Code section 16.52.)

The Authority finds, pursuant to Iowa Code section 17A.4(3), that notice and public participation are impracticable and contrary to the public interest in that many of the changes are required to ensure compliance with the federal Housing and Economic Recovery Act of 2008, and the normal notice and public participation process would delay implementation of those changes and could interfere with the Authority’s ability to perform compliance monitoring as required by Section 42 of the Internal Revenue Code. The Authority is also simultaneously publishing a Notice of Intended Action as **ARC 7701B** herein. The purpose of the Notice is to solicit comment on these amendments.

The Authority finds that adoption of these amendments confers a benefit on developers and prospective tenants of low-income housing, in that the rules ease and speed the administration of an important program that facilitates the development and maintenance of decent, affordable housing. The Authority finds that these amendments should be implemented as soon as feasible in order to implement the beneficial aspects of the Housing and Economic Recovery Act of 2008 and to ensure timely compliance with all applicable requirements of state and federal law. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these rules is waived.

The Authority adopted these amendments on February 27, 2009.

These amendments became effective on March 19, 2009.

These amendments are intended to implement Iowa Code sections 16.4(3) and 16.52, Internal Revenue Code Section 42, and the Housing and Economic Recovery Act of 2008.

The following amendments are adopted.

ITEM 1. Amend rule 265—12.3(16) as follows:

**265—12.3(16) Compliance manual.** ~~The compliance manual for all low income housing tax credit projects monitored by the authority for compliance with IRC Section 42, dated March 5, 2008, Low Income Housing Tax Credit Program Compliance Monitoring Manual, dated January 31, 2009, is~~ incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

ITEM 2. Amend rule 265—12.4(16) as follows:

**265—12.4(16) Location of copies of the manual.** The compliance manual can be reviewed and copied in its entirety on the authority’s Web site at [www.iowafinanceauthority.gov](http://www.iowafinanceauthority.gov). Copies of the compliance manual shall be deposited with the administrative rules coordinator and at the state law library. The compliance manual incorporates by reference IRC Section 42 and the regulations in effect as of ~~March 5, 2008~~ February 27, 2009. Additionally, the compliance manual incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and links to these statutes,

IOWA FINANCE AUTHORITY[265](cont'd)

regulations and rules are on the authority's Web site. Copies are available from the authority upon request at no charge.

[Filed Emergency 3/19/09, effective 3/19/09]

[Published 4/8/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.

## ARC 7682B

### NATURAL RESOURCE COMMISSION[571]

#### Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 8, "Contracts for Public Improvements and Professional Services," Iowa Administrative Code.

This amendment adopts by reference changes to IAC 561—Chapter 8 (Natural Resources Department). The amendments to 561—Chapter 8 change the threshold amount for which the Department of Natural Resources must seek approval from the Natural Resource Commission for public improvement projects and make other small modifications to align the bidding requirements with Iowa Code chapter 26. The thresholds are in line with changes to Iowa Code chapter 26.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 28, 2009, as **ARC 7535B**. The Department received no comments on the amendment.

Since publication of the Notice, one change has been made. The date of the adoption by reference of 561—Chapter 8 in rule 571—8.1(17A) has been changed to March 20, 2009, to coincide with the effective date of the amendments to 561—Chapter 8 (see **ARC 7681B** herein).

The Department finds that the adoption of this amendment will provide a benefit to individuals and companies that bid on public improvement projects by virtue of an expedited process. Allowing this earlier effective date will enable spring construction activities to benefit from the expedited process. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment is intended to implement Iowa Code section 455A.4.

This amendment became effective on March 20, 2009.

The following amendment is adopted.

Amend rule 571—8.1(17A) as follows:

**571—8.1(17A) Adoption by reference.** The commission adopts by reference 561—Chapter 8, Iowa Administrative Code, as amended through ~~June 19, 1994~~ March 20, 2009.

[Filed Emergency After Notice 3/17/09, effective 3/20/09]

[Published 4/8/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.

## ARC 7680B

### NATURAL RESOURCE COMMISSION[571]

#### Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby rescinds Chapter 78, "Ginseng Harvesting and Sale," Iowa Administrative Code, and adopts a new Chapter 78 with the same title.

The new chapter better defines wild and cultivated ginseng, green and dry ginseng, and those persons permitted to harvest and sell ginseng, and prohibits the harvesting or planting of ginseng on state-owned

## NATURAL RESOURCE COMMISSION[571](cont'd)

and state-managed lands. The new chapter also clarifies the fees charged for permits issued under these rules, the restrictions and prohibitions for harvesting wild ginseng, and the record-keeping and reporting requirements related to ginseng transactions.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 14, 2009, as **ARC 7498B**. The Department held a public hearing utilizing the Iowa Communications Network (ICN) on February 4, 2009, at 6 p.m. The Department utilized 11 locations around the state, with particular emphasis in those areas where ginseng harvesting and dealing are most prevalent. The Department received 26 comments, some positive and some negative. Most of the 10 positive comments praised the Department's efforts to protect the resource. The negative comments included concerns about the prohibition against legal harvest on state lands, the Department's not providing a program for seed distribution, and the requirement that harvesters carry out the tops of the plants when harvesting.

In addition to grammatical corrections and minor clarifications that have been made since the Notice, the Department has made the following changes to the rules:

1. Used the biologically correct term "rhizome" when appropriate and defined "root" to include a rhizome;

2. Modified the definitions of the different types of ginseng in response to comments received by the United States Fish and Wildlife Service, the entity responsible for the oversight of the Convention on International Trade in Endangered Species of Wild Fauna and Flora;

3. Made an exception to the harvest prohibitions in subrule 78.5(1) to allow commercial plant nurseries to maintain ginseng plants throughout the year; provided for a second type of dealer license, as described in paragraph 78.6(2)"c," that allows Iowa resident dealers transacting in less than five pounds of dry-weight ginseng per license year to pay a diminished fee for their licenses; and modified the license year for dealers in paragraph 78.6(2)"d" to be consistent with other dates in the rule;

4. Provided a recommended method to collect seeds from plants when wild ginseng is harvested and replanted pursuant to subrule 78.12(1);

5. Changed planting requirements in subrule 78.12(2) from two inches to one inch; removed suspension and modification from rule 571—78.17(456A) as actions the Department could take against violators; and clarified that reciprocity restrictions are only applicable to those states that allow for the harvest, cultivation and dealing of ginseng but do not extend those privileges to Iowa residents.

Pursuant to Iowa Code section 17A.5(2)"b"(2), these rules became effective April 1, 2009. The license year for ginseng dealers in the state is April 1 to March 31 of the following year. Therefore, the emergency adoption is necessary in order to ensure that the regulations are in place for the entire license year, as opposed to having the regulated community bound to two separate sets of regulations for one license year.

This amendment is intended to implement Iowa Code section 456A.24(11).

This amendment became effective April 1, 2009.

The following amendment is adopted.

Rescind 571—Chapter 78 and adopt the following **new** chapter in lieu thereof:

CHAPTER 78  
GINSENG HARVESTING AND SALE

**571—78.1(456A) Purpose.** The purposes of these rules are to establish a program for the harvesting and sale of American Ginseng subject to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); to provide for the time and conditions for harvesting the plant; and to provide requirements for the registration of growers, dealers and exporters and the records kept by dealers and exporters. The goal of the department's program is to ensure that American Ginseng (*Panax quinquefolius*), a slow-growing plant with increased demand due to its medicinal and commercial value, remains a sustainable resource in the state of Iowa.

**571—78.2(456A) Scope.** These rules shall apply to all persons harvesting, cultivating and dealing in American Ginseng (*Panax quinquefolius*) in Iowa. However, these rules are not intended to apply to the

## NATURAL RESOURCE COMMISSION[571](cont'd)

trade or trafficking of lawfully obtained American Ginseng that has been processed, prepared, packaged and labeled in a manner intended for its final consumptive use.

**571—78.3(456A) Definitions.** All words and phrases used in these rules shall have their ordinary and customary meaning, except that the following words and phrases shall be defined as follows:

*“Controlled conditions”* means a nonnatural environment that is intensively manipulated by human intervention for the purpose of plant production. General characteristics of controlled conditions may include, but are not limited to, tillage, fertilization, weed and pest control, irrigation, or nursery operations, such as potting, bedding, or protection from weather and artificial or natural shade or light.

*“Cultivated ginseng”* means ginseng that is nurtured, artificially propagated or maintained under controlled conditions from a seed, cutting, division, callus tissue, root, rhizome, other plant tissue, spore, or other propagule that has been derived from cultivated parental stock.

*“Cultivated parental stock”* means the ensemble of plants grown under controlled conditions that are used for reproduction and must be maintained in sufficient quantities for propagation.

*“Cutting”* or *“division”* means a plant grown from the root, rhizome, stem, or leaf of another plant and is considered to be artificially propagated only if the traded specimen does not contain any material collected from the wild.

*“Dealer”* means any person who deals in ginseng, which includes without limitation buying, selling, purchasing, holding, brokering, billing for, bartering, trading or otherwise receiving payment for wild or cultivated ginseng in Iowa, for the purpose of selling or otherwise transacting wild or cultivated ginseng. The term “dealer” includes any person, including without limitation a harvester, who sells ginseng to any person other than a dealer licensed pursuant to these rules or lawfully licensed in another state.

*“Dealer’s permit”* means a permit issued to a dealer by the department under these rules.

*“Department”* means the Iowa department of natural resources.

*“Director”* means the director of the Iowa department of natural resources or a designee.

*“Ginseng”* means all parts of the American Ginseng (*Panax quinquefolius*) plant, including without limitation roots, rhizomes, leaves and seeds, which may be cultivated or wild. “Ginseng,” however, for purposes of these rules, does not mean those parts of the American Ginseng plant that have been processed.

*“Green ginseng”* means a root of ginseng from which the moisture has not been removed by drying. For the purposes of these rules, the amount of dried ginseng rhizome which can be derived from green ginseng rhizome shall be calculated using a ratio of three and three-tenths to one (3.3:1) by weight.

*“Grower”* means a person who grows cultivated ginseng for the purpose of selling the ginseng.

*“Grower’s permit”* means a permit issued under these rules to a grower.

*“Harvester”* means any person who harvests, possesses, transports, cuts, gathers, destroys, digs or uproots wild ginseng for the purpose of selling the ginseng or for personal use.

*“Harvester’s permit”* means a permit issued under these rules to a harvester.

*“Nonresident”* means a person other than a resident as defined by Iowa Code section 483A.1A.

*“Permits”* means dealer’s permits, grower’s permits and harvester’s permits issued under these rules.

*“Resident”* means a resident as defined by Iowa Code section 483A.1A.

*“Root”* means the ginseng rhizome and its roots.

*“True leaves”* or *“prongs”* means compound leaves that include five leaflets consisting of three large leaflets and two small leaflets.

*“Wild ginseng”* means an unprocessed plant, dry or live green root, rhizome, seed or other part of ginseng, which is growing in or has been collected from its native habitat, including ginseng plants which have arisen from a seed that is planted in the wild, or which have been transplanted into native habitat. “Wild ginseng” is ginseng that has not been grown or nurtured by a person beyond planting of seeds or plants.

**571—78.4(456A) Season for legal harvest.** The season for legally harvesting ginseng is September 1 to October 31.

## NATURAL RESOURCE COMMISSION[571](cont'd)

**571—78.5(456A) General prohibitions.**

**78.5(1) Harvest.** From November 1 through the following August 31, no person shall harvest, dig, cut, uproot, gather, intentionally disturb, or destroy ginseng, whether the ginseng is wild or cultivated ginseng. This prohibition shall not apply to the transplantation or intentional disturbance of cultivated ginseng when such activities are incidental to the cultivation and growing of cultivated ginseng in a nursery business.

**78.5(2) Sale.** A person, other than a dealer licensed pursuant to these rules, shall not sell ginseng from March 16 through August 31.

**78.5(3) Sale and possession of green ginseng.** A person shall not possess or transact business in green ginseng from November 21 through August 31, unless otherwise provided for by these rules.

**78.5(4) State-owned and state-managed lands.** In an effort to conserve and protect native stands of wild ginseng, the introduction of nonnative ginseng stock on state-owned or state-managed lands under the jurisdiction of the commission is prohibited, except in narrow circumstances as described in these rules. As such, a person shall not, at any time, possess, harvest, dig, cut, uproot, gather, plant, propagate, intentionally disturb or destroy ginseng or ginseng seed on state-owned or state-managed lands under the jurisdiction of the commission. Nothing in this chapter shall prohibit the department from taking measures on state-owned or state-managed lands under the jurisdiction of the commission to conserve and protect native wild ginseng, which may include without limitation planting and possessing seeds.

**78.5(5) Out-of-state ginseng.** No ginseng dug, harvested or purchased outside the borders of Iowa which is not accompanied by a valid certificate of origin pursuant to rule 571—78.9(456A) shall be transported into or be in the state of Iowa lawfully.

**571—78.6(456A) Ginseng permits.** The department shall issue a grower's permit or dealer's permit upon receipt of a signed and complete application. An application shall be submitted on the form provided by the department, and payment of the appropriate fee, if applicable, shall be included with the application. Harvester's permits are available for sale through the department's electronic licensing system for Iowa (ELSI), which may be accessed through license agents throughout the state or on the department's Web site. The department shall not issue a permit if the department determines that the permit will be detrimental to the survival of ginseng or will otherwise be in contravention of the laws of this state or applicable federal laws. A person shall not carry, possess or use any other person's permit issued pursuant to these rules, except as specifically provided by these rules.

**78.6(1) Grower's permits.**

*a.* A person must obtain a permit from the department to legally grow cultivated ginseng. There is no fee for the permit, except for the charge associated with ELSI.

*b.* In order to be considered, an application for a grower's permit shall be made on the form provided by the department, shall be complete, and shall be executed by the person seeking the grower's permit.

*c.* A grower's permit shall be valid for five years from the date of issuance.

*d.* An application for permit renewal must be filed with the department within 60 days of expiration of the existing permit.

**78.6(2) Dealer's permits.**

*a.* A dealer in Iowa must have a valid dealer's permit issued by the department. A dealer's paid employees and family members who work at a dealer's primary place of business as identified on the dealer's permit may operate legally under the dealer's permit. For purposes of this subrule, family members include a dealer's spouse, domestic partner, parents, siblings, and children.

*b.* In order to be considered, an application for a dealer's permit shall be made on the form provided by the department, shall be complete, and shall be executed by the person seeking the dealer's permit.

*c.* Dealer's permits shall be issued as either Class A or Class B. A Class A dealer's permit authorizes a person to deal in any amount of ginseng in a license year. The permit application shall be accompanied by a \$250 permit fee for Iowa residents and a \$500 permit fee for nonresidents. A Class B dealer's permit authorizes an Iowa resident to deal in not more than five pounds dry weight of wild ginseng in a license year. The permit application shall be accompanied by a \$50 permit fee. There

## NATURAL RESOURCE COMMISSION[571](cont'd)

shall be an additional charge associated with ELSI. The department's issuance of the permit may take in excess of 60 days to complete.

*d.* A dealer's permit shall be valid for a license year, from April 1 until March 31 of the following year.

*e.* A dealer's permit must be shown to the department when the department is certifying ginseng and must be shown to harvesters or other dealers when the dealer is buying ginseng.

**78.6(3) Harvester's permits.**

*a.* Any person who harvests wild ginseng must have a valid harvester's permit issued by the department and shall produce such permit upon the request of the department while the person is engaged in harvesting activities, including the person's moving to or from the harvest site, transporting ginseng and the selling of the harvested ginseng.

*b.* An application for a harvester's permit shall be made on the form provided by the department, unless the harvester's permit is purchased through ELSI, and shall be accompanied by a fee of \$35 for residents and \$65 for nonresidents. There shall be an additional charge associated with ELSI. The application and subsequent harvester's permit shall be signed by the applicant.

*c.* A harvester's permit shall be valid from September 1 through March 15 of the following year.

*d.* A harvester who has a valid harvester's permit may sell wild ginseng from September 1 through March 15 of the following year.

*e.* A harvester with a valid harvester's permit may retain no more than four ounces of dry wild ginseng for personal consumption for one year beyond the expiration date of the permit. All wild ginseng possessed pursuant to this paragraph shall be for the harvester's personal use only and may not be lawfully sold.

*f.* No person may sell, barter or otherwise offer for sale any ginseng that has been unlawfully collected, obtained or possessed in violation of this chapter, the Code of Iowa, or the Code of Federal Regulations.

**78.6(4) Duplicate permits.** A duplicate grower's permit, harvester's permit or dealer's permit may be issued upon application to the department and the payment of a \$5 fee, plus any charges assessed to use ELSI to issue the duplicate permit.

**571—78.7(456A) Dealers—record keeping.**

**78.7(1) Contents of records.** Each permitted ginseng dealer shall keep individual, accurate, legible and complete records of each ginseng transaction. The records shall be on forms prescribed by the department, which shall provide a reasonable number of these forms at no cost to the dealer. The dealer's record of each ginseng transaction shall include:

*a.* The date of transaction; and

*b.* The name and address of the buyer or seller, whichever is applicable for the transaction; and

*c.* The harvester's permit number or dealer's permit number, if a dealer is buying ginseng in the transaction; and

*d.* A description of the ginseng transacted, including the actual weight of the ginseng transacted, and whether the ginseng is dried or green. If the ginseng is green ginseng, the weight shall also be converted to the dried weight of ginseng according to the ratio in rule 571—78.3(456A); and

*e.* The name of the county or counties where the ginseng was harvested if the ginseng is purchased from a harvester; and

*f.* A copy of the ginseng's certificate of origin, signed by the seller, if applicable; and

*g.* The year of harvest for the ginseng bought or sold; and

*h.* Any additional information as requested by the department and included on the department's form.

**78.7(2) Monthly reporting.** Each dealer shall submit to the department copies of all records required by subrule 78.7(1) on a monthly basis, no later than the fifteenth day of each month.

**78.7(3) Annual reporting.** Each dealer shall file an annual report with the department, which shall be delivered or postmarked by April 15. The annual report shall be filed on forms provided by the department and shall include the following information:

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- a. A summary of all the dealer's transactions during the preceding license year, from April 1 through March 31, including sales to out-of-state persons; and
- b. An inventory of any roots remaining in the dealer's possession in Iowa as of April 1, including the roots' certified weight and designation as either wild ginseng or cultivated ginseng, or a statement that the dealer has no roots remaining in the dealer's possession in Iowa as of that date. Any certification regarding a root's weight as required by this subrule shall be completed through the department or its agents at locations designated by the department, upon appointment.
- c. Any roots carried over from one license year to the next shall be documented on the following license year's reports.

**78.7(4) Records retention.** All records required by this rule shall be kept by the dealer for a period of three years after the expiration of the dealer's permit.

**571—78.8(456A) Dealer locations.**

**78.8(1) Generally.** Ginseng dealers shall transact business only at the location specified on the dealer's permit or at the place of business specified on the permit of any other dealer who holds a dealer's permit in Iowa and is involved in the transaction.

**78.8(2) Location permits.** A dealer who wishes to transact business at a location other than the locations provided for in subrule 78.8(1) may obtain a location permit from the department. Each location permit shall be valid only for the location specified on the location permit and shall entitle the dealer to operate at that location in addition to the location specified on the corresponding dealer's permit.

The department shall, upon application and payment of the applicable location permit fee, furnish a location permit to the dealer. The location permit fee shall be \$5 for residents and \$50 for nonresidents, plus any charge assessed for use of ELSI to issue the permit.

**78.8(3) Duplicate location permits.** A duplicate location permit may be issued upon application to the department and the payment of a \$5 fee, plus any charge assessed for use of ELSI to issue the duplicate permit.

**571—78.9(456A) Certificates of origin.**

**78.9(1) Shipments.** Every shipment of ginseng to a location outside the state of Iowa by a grower, harvester or dealer shall be accompanied by a certificate of origin, or shipping certificate, which certifies that the ginseng was lawfully harvested.

a. The department will issue a certificate of origin for cultivated ginseng to a grower or dealer upon application by the permit holder and based upon the completeness of the permit holder's application, which shall be on a form provided by the department, and the permit holder's compliance with the requirements of this chapter.

b. The department will issue a certificate of origin for wild ginseng to a harvester upon application by the permit holder and based upon the completeness of the permit holder's application, which shall be on a form provided by the department, and the permit holder's compliance with the requirements of this chapter.

c. The certificate of origin for wild ginseng will be issued by the department and its agents after the roots have been weighed and certified by the department or its agents at one of the locations designated by the department, upon appointment.

d. A grower, harvester, or dealer seeking a certificate of origin must have a valid grower's permit, harvester's permit, or dealer's permit, respectively, and must present the permit to receive a certificate of origin.

**78.9(2) Fees.** The department shall issue a certificate of origin free to any grower or dealer who lawfully possesses a valid grower's permit or dealer's permit, respectively, and for a fee of \$5 for each certificate to any harvester who lawfully possesses a valid harvester's permit.

**78.9(3) Compliance.** Certificates of origin shall be issued only to permit holders who have complied with the requirements of this chapter, including without limitation requirements regarding plant size for wild ginseng.

## NATURAL RESOURCE COMMISSION[571](cont'd)

**78.9(4) *Wild ginseng originating in another state.***

*a.* No person may ship out of this state to a foreign country wild ginseng that originates in another state or foreign country unless the wild ginseng is accompanied by a valid certificate of origin issued by that other state or foreign country. No person may ship out of this state wild ginseng that originates in another state under a certificate of origin issued pursuant to this chapter.

*b.* No resident may import for purposes of dealing wild ginseng that originates in another state unless the wild ginseng is accompanied by a valid certificate of origin from the other state. Original certificates of origin shall remain with the wild ginseng at all times.

*c.* If a resident dealer receives wild ginseng that originated in another state and if a certificate of origin issued by that state does not accompany the wild ginseng, the dealer shall return the wild ginseng to the sender within 30 days after its receipt.

*d.* A dealer shall maintain a copy of the certificate of origin with the record of transaction.

*e.* It shall be lawful for any person to have in possession any wild ginseng lawfully harvested or purchased outside Iowa and lawfully brought into Iowa so long as the person possesses a valid certificate of origin for the wild ginseng.

**571—78.10(456A) Inspection.**

**78.10(1)** At any time upon request, any permit issued under this chapter shall be made available to the department, director, officer appointed by the department, peace officer, or, in the case of a harvesting permit, the owner or person in lawful control of the land upon which the permittee may be harvesting wild ginseng. Failure of a person to carry or refusal to show or exhibit a valid permit while engaged in or presumed to be engaged in the harvesting, growing or dealing of ginseng in Iowa shall be a violation of this chapter. However, a person charged with violating these rules shall not be convicted if the person produces to the department or to a court officer, within a reasonable time, a permit issued to that person and valid when the person was charged with a violation of these rules. Failure to make such permit available is a violation of these rules.

**78.10(2)** Any records required by this chapter to be maintained or submitted shall be produced for inspection upon request of the department, director, officer appointed by the department, or peace officer. Failure to maintain records or to submit reports as required by these rules is a violation of these rules.

**78.10(3)** Any person or dealer who has in possession any ginseng or part thereof shall upon request of the department, director, any officer appointed by the department, or peace officer show the ginseng to the department, director or officer; a refusal to do so is a violation of this chapter.

**571—78.11(456A) Restrictions and prohibitions for harvesting wild ginseng.**

**78.11(1)** Every person shall have in possession a valid, department-issued permit to harvest wild ginseng for the current harvest season when harvesting, cutting, uprooting, gathering, destroying, possessing or transporting wild ginseng.

**78.11(2)** No person shall harvest a plant unless the plant possesses three or more true leaves or prongs and a flowering or fruiting stalk with red berries. If, after a person removes a plant from the soil with the requisite leaves or prongs, it is determined the root has less than five stem scars, the person shall return the plant to the soil at the same location and make best efforts to return the plant and the surrounding area to their condition prior to harvest of the plant. In no event shall a person harvest or possess a wild ginseng root unless the root has at least five stem scars.

**78.11(3)** When a person harvests wild ginseng, the entire plant, except the fruit and seeds, shall be retained with the plant until the plant is taken to the harvester's residence or place of business, as identified in the harvester's permit.

**571—78.12(456A) Additional restrictions and prohibitions for wild ginseng.****78.12(1) *Seeds.***

*a.* All persons harvesting wild ginseng shall plant all seeds collected from such plants within 100 feet of the parent plant. Seeds collected for planting pursuant to this subrule should be collected from the fruit by gently pressing the fruit of the ginseng.

## NATURAL RESOURCE COMMISSION[571](cont'd)

b. A person shall use no tool other than the person's finger to plant seeds from wild ginseng and shall push each seed to a depth of no more than one inch into the soil.

c. A person shall not possess or transport seeds of wild ginseng more than 100 feet from the site of the parent plant.

**78.12(2) Dealing.**

a. A person shall not purchase or sell wild ginseng if the person knows or should have known that the ginseng was harvested illegally.

b. A dealer shall not purchase wild ginseng without inspecting the permit of the harvester or dealer. A dealer shall not purchase wild ginseng if the dealer knows or should have known that the harvester or dealer has violated this chapter.

c. A person shall not buy, deal, purchase or otherwise transact business involving seeds from wild ginseng.

**571—78.13(456A) Compliance with laws.** A person shall not violate any state, federal or local laws in harvesting, dealing or shipping ginseng.

**571—78.14(456A) Violations of this chapter.**

**78.14(1)** A person violating this chapter shall be subject to a schedule fine pursuant to Iowa Code section 805.8B, subsection 4, and permit suspension, modification and revocation pursuant to 571—78.17(456A).

**78.14(2)** Separate offense. Each ginseng plant or part thereof, including wild ginseng, unlawfully harvested, dealt, or shipped shall be a separate offense. More than one person per plant may be guilty of violating this chapter.

**78.14(3)** Materials determined by the department's law enforcement personnel to be contraband or to have been taken in violation of this chapter may be seized and disposed of in conformance with Iowa Code chapter 809.

**571—78.15(456A) Possession.** When a person is in possession of wild ginseng, including the shipping or transporting of wild ginseng, and a container includes one or more parts of wild ginseng that are unlawful, the entire contents of the container shall be deemed unlawful.

**571—78.16(456A) Valuation.** The value of seized ginseng that was harvested in violation of these rules shall be based on the current market value, as determined by the department.

**571—78.17(456A) Revocation of permits.** Any permit issued pursuant to this chapter may be revoked, in whole or in part, by written notice, if the director determines that the permit holder has violated any provision of this chapter and determines that continuation of the permit is not in the public interest. Such revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation, the permit holder may file a notice of appeal, requesting a contested case pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the permit be reinstated.

**571—78.18(456A) Reciprocity.** Nonresident harvesters, growers and dealers from states that regulate American Ginseng by allowing the harvesting, cultivating and dealing in American Ginseng but that prohibit Iowa harvesters, growers and dealers to lawfully operate in those states are not eligible for permits issued by the department.

These rules are intended to implement Iowa Code section 456A.24(11).

[Filed Emergency After Notice 3/17/09, effective 4/1/09]

[Published 4/8/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.

**ARC 7681B**

**NATURAL RESOURCES DEPARTMENT[561]**

**Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code subsection 455A.4, the Director hereby amends Chapter 8, "Contracts for Public Improvements and Professional Services," Iowa Administrative Code.

These amendments change the threshold amount for which the Department of Natural Resources may approve public improvement projects and make other small modifications to align the bidding requirements with Iowa Code chapter 26. The thresholds established in this rule making are in line with changes to Iowa Code chapter 26.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 28, 2009, as **ARC 7534B**. The Department received no comments on the amendments.

Since publication of the Notice, two changes have been made to subrule 8.4(1). As a result of concerns raised by members of the Natural Resource Commission, the second sentence in subrule 8.4(1) now reads as follows: "All contracts for public improvements in excess of \$50,000 shall be approved by the director and the appropriate commission." That amount had been set at \$100,000 rather than \$50,000 in the Notice. Additionally, to improve clarity, the phrase "less than \$25,000" in the last sentence of subrule 8.4(1) has been changed to "for amounts of \$25,000 or less."

The Department finds that the adoption of these amendments will provide a benefit to individuals and companies that bid on public improvement projects by virtue of an expedited process. Allowing this earlier effective date will enable spring construction activities to benefit from the expedited process. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 455A.4.

These amendments became effective on March 20, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [8.2, 8.4(1)] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 7534B**, IAB 1/28/09.

[Filed Emergency After Notice 3/17/09, effective 3/20/09]

[Published 4/8/09]

[For replacement pages for IAC, see IAC Supplement 4/8/09.]

**ARC 7673B**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science hereby amends Chapter 31, "Licensure of Marital and Family Therapists and Mental Health Counselors," Iowa Administrative Code.

These amendments update licensure requirements for mental health counselors and marital and family therapists.

Amendments to Chapter 31 were published in the January 14, 2009, Iowa Administrative Bulletin as **ARC 7476B**. On February 6, 2009, the Administrative Rules Review Committee delayed for 70 days the amendments in Items 5 to 9 of **ARC 7476B** and directed the Board to work with concerned parties. The Board met with concerned parties and a resolution was reached.

In compliance with Iowa Code section 17A.4(3), the Board finds that notice and public participation are unnecessary because the amendments have already been through the process and these further amendments were agreed upon by all parties.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The Board also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendments should be waived and these amendments should be made effective April 30, 2009, when the 70-day delay expires, as it confers a benefit on affected parties for the amendments to become effective upon expiration of the delay.

The Board of Behavioral Science adopted these amendments on March 10, 2009.

These amendments will become effective on April 30, 2009.

These amendments are intended to implement Iowa Code chapters 21, 147, 154D and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 31.4(1) as follows:

**31.4(1) Accredited program.** Applicants must present with the application an official transcript verifying completion of a master’s degree of 60 semester hours (or 80 quarter hours or equivalent) or a doctoral degree in marital and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) from a college or university accredited by an agency recognized by the United States Department of Education. Applicants who entered a program of study prior to July 1, ~~2008~~ 2010, must present with the application an official transcript verifying completion of a master’s degree of 45 semester hours or the equivalent; or

ITEM 2. Amend subrule **31.4(2)**, introductory paragraph, as follows:

**31.4(2) Content-equivalent program.** Applicants must present an official transcript verifying completion of a master’s degree of 60 semester hours (or 80 quarter hours or equivalent) or a doctoral degree in a mental health, behavioral science, or a counseling-related field from a college or university accredited by an agency recognized by the United States Department of Education, which is content-equivalent to a graduate degree in marital and family therapy. Applicants who entered a program of study prior to July 1, ~~2008~~ 2010, must present with the application an official transcript verifying completion of a master’s degree of 45 semester hours or the equivalent. After March 31, 2009, graduates from non-COAMFTE-accredited marital and family therapy programs shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site <http://cce-global.org>. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation. In order to qualify as a “content-equivalent” degree, a graduate transcript must document:

ITEM 3. Rescind paragraphs **31.5(1)“c”** to **“e”** and adopt the following **new** paragraphs in lieu thereof:

*c.* Include successful completion of 3,000 hours of marital and family therapy that shall include at least 1,500 hours of direct client contact and 200 hours of clinical supervision. Applicants who entered a program of study prior to July 1, 2010, shall include successful completion of 200 hours of clinical supervision concurrent with 1,000 hours of marital and family therapy conducted in person with couples, families and individuals;

*d.* Include at least 100 of the 200 hours of clinical supervision as individual supervision;

*e.* Have 50 percent (100 hours) of the clinical supervision conducted in person; and

ITEM 4. Amend subrule 31.6(1) as follows:

**31.6(1) Accredited program.** Applicants must present with the application an official transcript verifying completion of a master’s degree of 60 semester hours (or equivalent quarter hours) or a doctoral degree in counseling with emphasis in mental health counseling from a mental health counseling program accredited by the Council on Accreditation of Counseling and Related Educational Programs (CACREP) from a college or university accredited by an agency recognized by the United States Department of Education. Applicants who entered a program of study prior to July 1, ~~2008~~ 2010, must present with the application an official transcript verifying completion of a master’s degree of 45 semester hours or the equivalent; or

ITEM 5. Amend subrule **31.6(2)**, introductory paragraph, as follows:

**31.6(2) Content-equivalent program.** Applicants must present an official transcript verifying completion of a master’s degree or a doctoral degree from a college or university accredited by an

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

agency recognized by the United States Department of Education which is content-equivalent to a master's degree in counseling with emphasis in mental health counseling. Applicants who entered a program of study prior to July 1, ~~2008~~ 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent. After March 31, 2009, graduates from non-CACREP-accredited mental health counseling programs shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site <http://cce-global.org>. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation. The degree will be considered as "content-equivalent" if it includes 60 semester hours (or equivalent quarter hours) and successful completion of graduate-level coursework in each of the following areas:

ITEM 6. Rescind paragraphs **31.7(1)"c"** to "**e**" and adopt the following **new** paragraphs in lieu thereof:

*c.* Include successful completion of at least 3,000 hours of mental health counseling that shall include at least 1,500 hours of direct client contact and 200 hours of clinical supervision. Applicants who entered a program of study prior to July 1, 2010, shall include successful completion of 200 hours of clinical supervision concurrent with 1,000 hours of mental health counseling conducted in person with couples, families and individuals;

*d.* Include at least 100 of the 200 hours of supervision as individual supervision;

*e.* Include 50 percent (100 hours) of all clinical supervision in person; and

ITEM 7. Amend rule 645—31.8(154D) as follows:

**645—31.8(154D) Licensure by endorsement.** An applicant who has been a licensed marriage and family therapist or mental health counselor under the laws of another jurisdiction may file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

1. to 3. No change.

4. Provides official transcripts sent directly from the school to the board verifying completion of a master's degree of 45 hours or equivalent if the applicant entered a program of study prior to July 1, ~~2008~~ 2010, or verifying completion of a master's degree of 60 hours or equivalent if the applicant entered a program of study on or after July 1, ~~2008~~ 2010, or the appropriate doctoral degree. After March 31, 2009, graduates from a non-CACREP-accredited mental health counselor program or a non-COAMFTE-accredited marital and family therapy program shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site <http://cce-global.org>. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation;

5. to 7. No change.

[Filed Emergency 3/12/09, effective 4/30/09]

[Published 4/8/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.

**ARC 7672B**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby amends Chapter 50, "Oral Health," Iowa Administrative Code.

In 2008, new Chapter 50, which describes the purpose and responsibilities of the State Dental Director and the Oral Health Bureau, was Adopted and Filed and published in the July 30, 2008, Iowa Administrative Bulletin as **ARC 7023B**, to become effective September 3, 2008. At its meeting held on

PUBLIC HEALTH DEPARTMENT[641](cont'd)

August 12, 2008, the Administrative Rules Review Committee voted to delay the effective date of these rules for 70 days to allow for additional discussion and review at the Committee's September 9, 2008, meeting. The Committee imposed the 70-day delay over questions about the possibility of nondental professionals' performing dental treatment under these rules. Committee members requested that the Department meet with stakeholders and work to resolve these questions.

Following additional review at the Committee's October 14, 2008, meeting, the Committee voted to impose a legislative session delay on the definition of the term "dental home," as published in rule 641—50.2(135). The effect of that action was to delay the effective date of the definition of "dental home" until the adjournment of the regular 2009 Session of the General Assembly. The remaining provisions of Chapter 50 (as published in **ARC 7023B**) went into effect on November 12, 2008, upon the expiration of the 70-day delay.

The Department and stakeholders have agreed to a revised definition of "dental home." In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because the amendment is the result of public participation from the original filing that had been delayed.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective April 15, 2009, as it confers a benefit on the public to have the agreed-upon definition effective prior to the end of the 2009 Session of the General Assembly when the original definition would become effective.

The State Board of Health adopted this amendment on March 11, 2009.

This amendment will become effective on April 15, 2009.

This amendment is intended to implement Iowa Code sections 135.14 and 135.15.

The following amendment is adopted.

Amend rule **641—50.2(135)**, definition of "Dental home," as follows:

*"Dental home"* means a network of ~~dental and nondental public and private health care professionals providing~~ individualized care based on risk assessment. ~~Services include, which includes~~ oral health education, dental screenings, preventive services, diagnostic services, treatment services, and emergency services.

[Filed Emergency 3/11/09, effective 4/15/09]

[Published 4/8/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.

**ARC 7698B****ENERGY INDEPENDENCE, OFFICE OF[350]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 469.3 and 2008 Iowa Acts, chapter 1144, the Office of Energy Independence hereby amends Chapter 3, "Iowa Power Fund Board and Due Diligence Committee," and Chapter 4, "Iowa Power Fund Financial Assistance," Iowa Administrative Code.

These amendments clarify the electronic recording of board and committee proceedings; amend the percentage of the fund available for administrative costs, in accordance with Iowa Code section 469.10(2); and establish a process for considering requests to keep information confidential, in accordance with Iowa Code section 469.6(6).

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 11, 2009, as **ARC 7573B**. No comments were received from the public regarding the proposed amendments. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement 2008 Iowa Acts, chapter 1144.

These amendments will become effective on May 13, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [3.3(2)"c," 4.4(3), 4.9 to 4.11] is being omitted. These amendments are identical to those published under Notice as **ARC 7573B**, IAB 2/11/09.

[Filed 3/18/09, effective 5/13/09]

[Published 4/8/09]

[For replacement pages for IAC, see IAC Supplement 4/8/09.]

**ARC 7679B****ENVIRONMENTAL PROTECTION COMMISSION[567]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 455B.103(5), the Environmental Protection Commission hereby adopts Chapter 35, "Air Emissions Reduction Assistance Program," Iowa Administrative Code.

The purpose of this chapter is to establish a financial assistance program to distribute funds appropriated to Iowa through the federal American Recovery and Reinvestment Act of 2009 (Act). The funds will be distributed to eligible applicants through grants or a combination of grants and loans. The program addresses emissions from diesel vehicles and equipment currently used for on-road applications, such as buses and heavy-duty diesel trucks, and non-road applications, such as construction, agriculture, or mining. Eligible projects include engine idling reduction and retrofit technologies, engine replacement, vehicle replacement, and use of clean diesel emerging technologies.

There is an expedited time line for distribution of federal funds to eligible applicants. The Commission is proceeding with these rules in an expedited manner to meet the time line requirements of Section 701 of the federal Act. According to the provision of Section 701, U.S. EPA must report the details of the programs to Congress by mid-May 2009. Disbursement of funds is anticipated to be required shortly after approval of the programs. Guidelines for the financial assistance program and application forms will be posted on the DNR's Web site.

In compliance with Iowa Code section 17A.4(3), the Commission finds that notice and public participation prior to the adoption of these rules are not practicable and are contrary to the public interest.

These rules are also published herein under Notice of Intended Action as **ARC 7678B** to allow for public comment. This Adopted and Filed Without Notice filing permits the Department to implement the new provisions of the law on the expedited time line provided for in the federal Act.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

These rules are intended to implement Iowa Code section 455B.103(5).

These rules will become effective May 13, 2009.

The following amendment is adopted.

Adopt the following new 567—Chapter 35:

CHAPTER 35  
AIR EMISSIONS REDUCTION ASSISTANCE PROGRAM

**567—35.1(455B) Purpose.** The purpose of this program is to provide financial assistance to eligible applicants for the purpose of reducing air pollution emissions.

**567—35.2(455B) Definitions.** For the purposes of this chapter, the following definitions shall apply:

“*Applicant*” means any unit of state or local government, public or private group, business or individual.

“*Cost share*” means the applicant’s share of proposed eligible project costs.

“*Department*” means the Iowa department of natural resources.

“*Eligible costs*” means costs directly related to the eligible project and for which financial assistance moneys may be used.

“*Eligible project*” means any project which, when implemented, will reduce air emissions.

“*Financial assistance*” means monetary assistance awarded under these rules to an applicant in the form of a grant or loan.

“*Grant*” means an award of assistance with the expectation that, with the fulfillment of the conditions of the award, repayment of funds is not required.

“*Loan*” means an award of financial assistance with the requirement that the award be repaid, including interest as identified in the written agreement between the department and the recipient. A “deferred loan” is one for which repayment of principal or interest, or both, is not required for a specified period of time. A “forgivable loan” is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

“*Recipient*” means any applicant selected to receive financial assistance under these rules.

**567—35.3(455B) Role of the department of natural resources.** The department is responsible for the administration of the program and for disbursement of funds to eligible projects receiving financial assistance under these rules.

**567—35.4(455B) Eligible projects.** The department may provide financial assistance to applicants for projects that are consistent with the purpose of this program.

**567—35.5(455B) Forms.** Applicants shall submit proposed eligible projects on application forms provided by the department. The applications are considered public records.

**567—35.6(455B) Project selection.** The director has sole discretion to determine which eligible projects will receive an award of moneys under this program. Emphasis in selecting eligible projects will be placed on the amount of air pollution emissions reductions anticipated, cost-effectiveness, and the proposed location of the eligible project. Proposed eligible projects must be in compliance with all applicable state and federal statutes and rules. The director shall evaluate the proposals, and applicants will be awarded financial assistance based on selection criteria contained in the applicable application guidelines available from the department.

**567—35.7(455B) Funding sources.** The department will use the funds designated by the legislature and other sources to achieve the purpose outlined in these rules.

**567—35.8(455B) Type of financial assistance.** Financial assistance awarded under this program may be in the form of a loan, forgivable loan, deferred loan, grant, or a combination thereof. The type of

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

financial assistance offered to an applicant is dependent upon the amount of program funds awarded to each selected eligible project. The department reserves the right to offer any combination of financial assistance types to any selected eligible project.

**567—35.9(455B) Term of loans.** The term of loans executed under these rules shall be determined on a case-by-case basis and shall be based on the specific costs financed, as well as the terms of other financing provided for the eligible project. The written agreement between the department and the recipient will establish other conditions or terms needed to manage or implement the eligible project.

**567—35.10(455B) Reduced award.** The department reserves the right to offer financial assistance in an amount less than the amount requested by the applicant. In the event that financial assistance offered is less than the amount requested by an applicant, the applicant may be asked to document the impact of the reduced award on the proposed eligible project. Reduced awards shall be offered when the department has determined that:

1. Program resources are insufficient to provide the level of financial assistance requested to all applicants to which the department intends to offer financial assistance.
2. The applicant could implement the eligible project at a reduced level of financial assistance and achieve the eligible project objectives and purpose of this program.

**567—35.11(455B) Fund disbursement limitations.** No funds shall be disbursed until the department has:

1. Determined the total estimated cost of the eligible project;
2. Determined that financing for the cost-share amount, if applicable, is ensured by the recipient;
3. Received confirmation that all required permits or permit amendments have been obtained by the recipient;
4. Received commitments from the recipient to implement the eligible project; and
5. Executed a written agreement with the recipient.

**567—35.12(455B) Applicant cost share.** If requested by the department, an applicant for financial assistance shall agree to provide a cost share of funds committed to the eligible project. Financial assistance moneys received by the applicant under these rules are ineligible to be utilized for any portion of the required applicant cost share. Applicant cost share shall be in accordance with the schedule outlined in the applicable application guidelines available from the department.

**567—35.13(455B) Eligible costs.** Applicants may request financial assistance in the implementation and operation of an eligible project which includes, but is not limited to, funds for the purpose of:

1. Purchase and installation of air pollution reduction equipment;
2. Replacement or modification of air pollution control equipment, or process and equipment, including labor for installation;
3. Development, printing and distribution of educational materials;
4. Planning and implementation of educational forums including, but not limited to, workshops;
5. Expenses directly related to implementation and operation of the eligible project; and
6. Research, laboratory analysis costs, engineering, or consulting fees.

**567—35.14(455B) Ineligible costs.** Financial assistance shall not be provided or used for costs including, but not limited to, the following:

1. Taxes;
2. Vehicle registration;
3. Legal costs;
4. Contingency funds;
5. Proposal preparation;
6. Contractual project administration;
7. Land acquisition;

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

8. Office furniture, office computers, fax machines and other office furnishings and equipment;
9. Costs for which payment has been or will be received under another federal, state or private financial assistance program; and
10. Costs incurred before a written agreement between the applicant and the department has been executed. Ineligible costs shall be determined with applicable publications from the federal office of management and budget.

**567—35.15(455B) Written agreement.** Each recipient shall enter into a contract with the department for the purposes of implementing the eligible project for which financial assistance has been awarded. The contract shall be signed by an authorized representative of the department and the authorized officer of the recipient. In cases in which the department has awarded other than a grant or forgivable loan, the recipient will be required to make regularly scheduled installment payments to retire the loan and any interest assigned to the loan as identified in the executed contract. The recipient will be required to submit periodic progress reports as identified in the executed contract. Progress reports are considered part of the public record. The department may terminate any contract and seek the return of any funds released under the contract for failure by the recipient to perform under the terms and conditions of the contract. Amendments to contracts may be adopted by mutual written consent by the department and the selected applicant.

**567—35.16(455B) Financial assistance denial.** An applicant may be denied financial assistance for any of the following reasons:

1. Funds are insufficient to award financial assistance to all qualified applicants;
2. The applicant does not meet eligibility requirements pursuant to provisions of these rules;
3. The applicant does not provide sufficient information requested on forms provided by the department pursuant to these rules;
4. The applicant has previously received a loan under these rules and is determined by the department to be delinquent in repaying the loan;
5. The eligible project goals or scope is not consistent with these rules; or
6. The director concludes the denial is appropriate.

These rules are intended to implement Iowa Code section 455B.103(5).

[Filed Without Notice 3/17/09, effective 5/13/09]

[Published 4/8/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.

**ARC 7694B**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.265, the Environmental Protection Commission hereby amends Chapter 50, "Scope of Division—Definitions—Forms—Rules of Practice," and Chapter 55, "Aquifer Storage and Recovery: Criteria and Conditions for Authorizing Storage, Recovery, and Use of Water," Iowa Administrative Code.

The adopted amendments to Chapter 50 include fees for the water use permit program and move the permit fee for the aquifer storage and recovery well permitting program from Chapter 55 to Chapter 50. Adopted in 2008, Iowa Code subsection 455B.265(6) authorizes the Environmental Protection Commission to adopt by rule fee amounts for permit applications and annual fees, up to \$500,000 each fiscal year. In determining the fees, the Commission is required to consider the cost of reviewing applications, issuing permits, ensuring compliance with the terms of the permits, and resolving water interference complaints. Each year, the Commission will calculate the fee based on the budgeted

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

expenses for that year minus the general fund appropriation and the amount of any unused funds from the previous year.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 5, 2008, as **ARC 7307B**. A notice of the proposed rule making, public comment period, and public hearings was mailed to each of the 2,537 current water withdrawal permit holders on November 14, 2008. Three public hearings were held in December 2008 in Onawa (12/3/08), Iowa City (12/5/08), and Des Moines (12/11/08), and were attended by 65 people. Comments were received from 56 people, with varying levels of support or opposition. A public participation responsiveness summary is available from the Department upon request by telephone at (515)725-0281 or by E-mail at [diane.moles@dnr.iowa.gov](mailto:diane.moles@dnr.iowa.gov). These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code section 455B.265.

These amendments will become effective May 13, 2009.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 50.4(2):

**50.4(2) Fees.**

*a. Application fee.* An application to the department for a new permit, modification of an existing permit, or registration of a minor nonrecurring use of water must be accompanied with the fee listed in the table below. These fees are nonrefundable and are not transferable. For any single application, if more than one fee in the table below applies, only the higher fee is required. The fees become effective on July 1, 2009.

Application Description	Form	Fees, in dollars
(1) To apply for a new permit to withdraw or divert water	16 (542-3106)	\$350
(2) To renew an existing permit	542-1470	\$0
(3) To modify an existing permit to either add a new source or increase the amount or rate of water withdrawn or diverted from a source or sources	16 (542-3106)	\$350
(4) To modify the conditions of an existing permit which are not described in Item 3 of this table (see above)	16 (542-3106)	\$0
(5) To apply for an aquifer storage and recovery permit or a protected source designation	N/A	\$700
(6) To apply for a permit to store water	18 (542-3109)	\$75
(7) To register a minor nonrecurring use of water	20 (542-3112)	\$75

*b. Annual permit fee.* In addition to the application fee, there is an annual permit fee for a water use permit or an aquifer storage and recovery permit. The annual fee shall be based on the number of active permits. Each permit holder shall pay the same annual fee. The fee will not be prorated and is nonrefundable. The annual permit fee is due December 1 of each year, beginning with December 1, 2009. The department will provide an annual fee notice to each permittee at least 60 days prior to the fee due date. An additional fee of \$100 will be imposed if the fee is not received by December 1. Failure to remit the fee by January 1 may result in the cancellation of the permit.

(1) There is no annual fee for a water storage permit (see (6) of table, paragraph 50.4(2) "a") or for a minor nonrecurring water use registration (see (7) of table, paragraph 50.4(2) "a").

(2) The annual fee shall be based on the costs for administering the water use permitting program for the previous calendar year and on the budget for the next fiscal year. The department will review the annual permit fee each year and adjust the fee as necessary to cover all reasonable costs required to develop and administer the water use permitting program. Permit holders that have paid an application fee after December 1, but prior to November 30, will not be required to pay an annual fee until December 1 of the following year. If an applicant remits an annual fee for the 12-month period beginning December 1 and then later submits an application fee for a permit modification, the applicant will be refunded the lesser of the fees. The department shall request commission approval of the amount of the annual fee no later than September 30 of each year.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 2. Rescind and reserve subrule **55.5(2)**.

[Filed 3/18/09, effective 5/13/09]

[Published 4/8/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.

**ARC 7695B**

**HOMELAND SECURITY AND EMERGENCY MANAGEMENT  
DIVISION[605]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Division hereby amends Chapter 10, "Enhanced 911 Telephone Systems," Iowa Administrative Code.

The Homeland Security and Emergency Management Division amends subrule 10.3(1), paragraph "a," to reflect changes made to Iowa Code chapter 34A in 2008 Iowa Acts, House File 247. This amendment provides further clarification on membership requirements of Joint E911 Service Boards.

Additionally, the Division amends subrules 10.15(2) through 10.15(6). The amendments to these subrules reflect changes that have occurred in the Division's organizational structure.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 17, 2008, as **ARC 7431B**. No comments were made by the public regarding the proposed amendments. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 34A.

These amendments will become effective on May 13, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [10.3(1)"a," 10.15] is being omitted. These amendments are identical to those published under Notice as **ARC 7431B**, IAB 12/17/08.

[Filed 3/18/09, effective 5/13/09]

[Published 4/8/09]

[For replacement pages for IAC, see IAC Supplement 4/8/09.]

**ARC 7703B**

**IOWA FINANCE AUTHORITY[265]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5(1)"r," the Heartland Disaster Tax Relief Act of 2008, and Executive Order Number 9, the Iowa Finance Authority hereby adopts new Chapter 30, "Qualified Midwestern Disaster Area Bond Allocation," Iowa Administrative Code.

The purpose of these rules is to implement a process for allocating the authority to issue and sell Midwestern Disaster Area bonds, as permitted by the Heartland Disaster Tax Relief Act of 2008.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 14, 2009, as **ARC 7512B**. The Authority did not receive any public comment on the proposed rules. The Authority made no changes to the rules as noticed. These rules were also Adopted and Filed Emergency and were simultaneously published in the Iowa Administrative Bulletin on January 14, 2009, as **ARC 7511B**.

These rules are intended to implement Iowa Code section 16.5(1)"r," the Heartland Disaster Tax Relief Act of 2008, and Executive Order Number 9.

The Iowa Finance Authority adopted these rules on February 27, 2009.

## IOWA FINANCE AUTHORITY[265](cont'd)

These rules will become effective on May 13, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 30] is being omitted. These rules are identical to those published under Notice as **ARC 7512B** and Adopted and Filed Emergency as **ARC 7511B**, IAB 1/14/09.

[Filed 3/19/09, effective 5/13/09]

[Published 4/8/09]

[For replacement pages for IAC, see IAC Supplement 4/8/09.]

**ARC 7704B****IOWA FINANCE AUTHORITY[265]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3(1)"b," 16.5(1)"r," and 16.100A, the Iowa Finance Authority hereby adopts new Chapter 31, "Council on Homelessness," Iowa Administrative Code.

The purpose of these rules is to organize and establish procedures for the Council on Homelessness created by 2008 Iowa Acts, Senate File 2161 (Iowa Code section 16.100A).

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 14, 2009, as **ARC 7514B**. The Authority did not receive any public comment on the proposed rules. The Authority made no changes to the rules as noticed. These rules were also Adopted and Filed Emergency and were simultaneously published in the Iowa Administrative Bulletin as **ARC 7513B**.

These rules are intended to implement Iowa Code sections 16.5(1)"r" and 16.100A.

The Iowa Finance Authority adopted these rules on February 27, 2009.

These rules will become effective on May 13, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 31] is being omitted. These rules are identical to those published under Notice as **ARC 7514B** and Adopted and Filed Emergency as **ARC 7513B**, IAB 1/14/09.

[Filed 3/19/09, effective 5/13/09]

[Published 4/8/09]

[For replacement pages for IAC, see IAC Supplement 4/8/09.]

**ARC 7699B****LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner hereby amends Chapter 10, "General Industry Safety and Health Rules," and Chapter 26, "Construction Safety and Health Rules," Iowa Administrative Code.

The amendments adopt by reference changes to federal occupational safety and health regulations concerning training and personal protective equipment (PPE). The changes clarify that a standard that requires training or PPE requires that the training or PPE be provided to each and every employee covered by the standard, and that noncompliance may expose the employer to liability on a per-employee basis.

The principal reasons for adoption of these amendments are to implement Iowa Code chapter 88, to protect the safety and health of Iowa's workers, and to make Iowa's rules more current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1)"a," Iowa must adopt the federal standards.

## LABOR SERVICES DIVISION[875](cont'd)

No waiver provision is included in these rules as waiver provisions are set forth in Iowa Code section 88.5.

Notice of Intended Action for these amendments was published in the February 11, 2009, Iowa Administrative Bulletin as **ARC 7541B**. A public hearing was held on March 4, 2009. No member of the public commented on the Notice of Intended Action. One nonsubstantive change was made to update the implementation sentence for Chapter 10.

These amendments are intended to implement Iowa Code section 88.5.

These amendments will become effective May 13, 2009.

The following amendments are adopted.

ITEM 1. Amend rule **875—10.20(88)** by inserting the following at the end thereof:

73 Fed. Reg. 75583 (December 12, 2008)

ITEM 2. Amend **875—Chapter 10**, implementation sentence, as follows:

~~This rule is~~ These rules are intended to implement Iowa Code sections ~~84A.1, 84A.2, 88.2 and~~ section 88.5.

ITEM 3. Amend rule **875—26.1(88)** by inserting the following at the end thereof:

73 Fed. Reg. 75583 (December 12, 2008)

[Filed 3/19/09, effective 5/13/09]

[Published 4/8/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.

**ARC 7684B****NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby amends Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code.

The amendments update the camping fee breakdown to accommodate the state sales tax increase to 6 percent (no fee increase); establish new cabin rental fees for new cabins which are under construction at Pine Lake, Nine Eagles and Springbrook State Parks; and increase the camping cabin fee at Pleasant Creek State Recreation Area to the same fee as other state park camping cabins. The amendments also establish minimum stay requirements for the multifamily cabins, including a two-night minimum stay requirement throughout the year, a Friday/Saturday stay requirement for summer season weekends, and a three-night stay requirement for Memorial Day weekend, Fourth of July weekend, and Labor Day weekend.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7539B** on January 28, 2009. A public hearing was held at the Wallace State Office Building on February 17, 2009. No comments were received at the public hearing or otherwise. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code sections 461A.3, 461A.47, and 461A.57.

These amendments will become effective May 13, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [61.4(1), 61.5] is being omitted. These amendments are identical to those published under Notice as **ARC 7539B**, IAB 1/28/09.

[Filed 3/17/09, effective 5/13/09]

[Published 4/8/09]

[For replacement pages for IAC, see IAC Supplement 4/8/09.]

**ARC 7683B****NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby amends Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code.

The amendment rescinds subrule 61.7(2), which pertains to beach use and swimming, and adopts a new subrule in order to restructure the content to include a new subparagraph. The new subparagraph contains a provision to allow persons to register at a park to swim outside the designated swim area from sunrise to sunset. The new subparagraph also provides conditions the swimmer must follow for visibility purposes. Those conditions include that the swimmer must be accompanied by a person in a vessel at all times and that the swimmer must stay within 20 feet of the vessel at all times. In addition, the vessel must display a 12-inch-square, bright orange flag which can be seen all around the horizon. These changes are a result of a petition for rule making received from a triathlete who requested a change to allow triathletes the opportunity to train in state park and recreation area lakes outside the designated swim area.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7499B** on January 14, 2009. A public hearing was held at the Wickiup Hills Outdoor Learning Center on February 3, 2009, and a public hearing was held at the Wallace State Office Building on February 4, 2009. No comments were received at the public hearings or otherwise. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code sections 461A.35 and 461A.44.

This amendment will become effective May 13, 2009.

The following amendment is adopted.

Rescind subrule 61.7(2) and adopt the following new subrule in lieu thereof:

**61.7(2) Beach use/swimming.**

*a.* Except as provided in paragraphs "b" and "c" of this subrule, all swimming and scuba diving shall take place in the beach area within the boundaries marked by ropes, buoys, or signs within state parks and recreation areas. Inner tubes, air mattresses and other beach-type items shall be used only in designated beach areas.

*b.* Persons may scuba dive in areas other than the designated beach area provided they display the diver's flag as specified in rule 571—41.10(462A).

*c.* Swimming outside beach area.

(1) Persons may swim outside the beach area under the following conditions:

1. Swimming must take place between sunrise and sunset;

2. The swimmer must be accompanied by a person operating a vessel and must stay within 20 feet of the vessel at all times during the swim;

3. The vessel accompanying the swimmer must display a flag, which is at least 12-inches square, is bright orange, and is visible all around the horizon; and

4. The person swimming pursuant to this subparagraph must register with the park staff in charge of the area and sign a registration immediately prior to the swim.

(2) Unless swimming is otherwise posted as prohibited or limited to the designated beach area, a person may also swim outside the beach area provided that the person swims within ten feet of a vessel which is anchored not less than 100 yards from the shoreline or the marked boundary of a designated beach. Any vessel, except one being uprighted, must be attended at all times by at least one person remaining on board.

(3) A passenger on a sailboat or other vessel may enter the water to upright or repair the vessel and must remain within ten feet of that vessel.

## NATURAL RESOURCE COMMISSION[571](cont'd)

*d.* The provisions of paragraph “a” of this subrule shall not be construed as prohibiting wading in areas other than the beach by persons actively engaged in shoreline fishing.

[Filed 3/17/09, effective 5/13/09]

[Published 4/8/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.

**ARC 7687B****NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 94, “Nonresident Deer Hunting,” Iowa Administrative Code.

Chapter 94 gives the regulations for nonresident deer hunting and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of taking, and transportation and reporting requirements.

The amendment to subrule 94.6(2) adds 1,000 licenses to the quota for optional antlerless-only licenses. This change should allow more does to be taken in counties where the doe harvest needs to be increased to meet the Department’s goals. The change should also allow more former residents to return and hunt with their families and traditional groups.

The amendment to subrule 94.7(6) revises the paragraph that requires hunters during the shotgun seasons to use hunter orange on blinds. This change makes the requirements the same for both residents and nonresidents during the regular gun season.

The amendment to rule 571—94.12(481A) allows nonresidents to obtain antlerless-only licenses for the January antlerless season. These licenses will come from the resident quota in those counties where the resident quota has not filled and will go on sale to nonresidents on January 11. All regulations that apply to resident hunters during the January season will apply to nonresident hunters as well. This change will allow more does to be taken in those counties where the doe harvest needs to be increased to meet the Department’s goals.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 14, 2009, as **ARC 7500B**. A public hearing was held on February 13, 2009. No comments were received.

Since the Notice was published, one change has been made in rule 571—94.12(481A). The date that the January antlerless-only licenses go on sale to nonresidents was changed from January 3 to January 11 so that nonresidents will not be able to buy these licenses until after the resident late muzzleloader season ends on January 10.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1 and 483A.8.

These amendments shall become effective May 13, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 94.6(2) as follows:

**94.6(2) Quota applicability.** The license quota issued for each zone will be the quota for all bow, regular gun and muzzleloader season licenses combined. No more than 6,000 any-deer licenses and 6,000 mandatory antlerless-only licenses will be issued for all methods of take combined, for the entire state. Of the 6,000 any-deer and 6,000 mandatory antlerless-only licenses, no more than 35 percent in any zone can be bow licenses. A maximum of ~~3,500~~ 4,500 optional antlerless-only licenses will be issued on a county-by-county basis. The licenses will be divided between the counties in the same proportion as resident antlerless-only licenses. Hunters must designate a zone or county and season when purchasing the license and hunt only in that zone or county and season.

## NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 2. Amend subrule 94.7(6) as follows:

**94.7(6) ~~Ground blinds. Hunting from blinds.~~** ~~No person shall use a portable ground blind for hunting deer during the regular gun deer seasons unless such blind exhibits a solid blaze orange marking visible in all directions with a minimum height of 12 inches and a minimum width of 12 inches. As used in this subrule, “ground blind” means a constructed place of concealment. A ground blind is not a naturally occurring feature that a hunter merely uses for concealment.~~ No person shall use a blind for hunting deer during the regular gun deer seasons as defined in 94.2(2), unless such blind exhibits a solid blaze orange marking visible in all directions with a minimum height of 12 inches and a minimum width of 12 inches. Such blaze orange shall be affixed directly on or directly on top of the blind. For the purposes of this subrule, the term “blind” is defined as a place of concealment constructed, either wholly or partially from man-made materials, and used by a person who is hunting for the purpose of hiding from sight. A blind is not a naturally occurring landscape feature or an arrangement of natural or agricultural plant material that a hunter uses for concealment. In addition to the requirements in this subrule, hunters using blinds must also satisfy the requirements of wearing blaze orange as prescribed in Iowa Code section 481A.122.

ITEM 3. Adopt the following **new** rule 571—94.12(481A):

**571—94.12(481A) January antlerless season.** Beginning on January 11, nonresident hunters may obtain antlerless-only licenses for the January antlerless season specified in 571—subrule 106.2(5). Licenses will be available only in those counties specified in 571—subrule 106.6(4) until the quota provided in 571—subrule 106.6(6) is filled. All regulations specified in 571—Chapter 106 for the January antlerless season for resident hunters including limits, shooting hours, method of take, tagging and reporting requirements will also apply to nonresident hunters during this season.

[Filed 3/17/09, effective 5/13/09]

[Published 4/8/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.

**ARC 7668B**

## **NURSING BOARD[655]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby rescinds Chapter 17, “Child Support Noncompliance,” and Chapter 18, “Student Loan Default or Noncompliance,” and adopts new Chapter 17, “Nonpayment of Child Support, Student Loan, or State Debt,” Iowa Administrative Code.

These amendments combine regulations requiring license denial, suspension or revocation for noncompliance with or nonpayment of child support, student loan or state debt.

These amendments were published in the Iowa Administrative Bulletin on January 14, 2009, as **ARC 7488B**.

Since publication of the Notice, the following changes have been made. The chapter has been divided into three divisions to distinguish between those rules pertaining to nonpayment of child support, student loans, and student debt, respectively. In addition, minor modifications have been made to rule titles so that these titles correspond with the new division titles.

These amendments are intended to implement Iowa Code chapters 252J, 261, and 272D.

These amendments will become effective May 13, 2009.

The following amendments are adopted.

NURSING BOARD[655](cont'd)

ITEM 1. Rescind 655—Chapter 17 and adopt the following **new** chapter in lieu thereof:

CHAPTER 17  
NONPAYMENT OF CHILD SUPPORT, STUDENT LOAN, OR STATE DEBT

DIVISION I  
NONPAYMENT OF CHILD SUPPORT

**655—17.1(252J) Definitions.** The following definitions shall apply to rules 17.2(252J) and 17.3(252J) of this chapter.

“*Certificate*” means a document known as a certificate of noncompliance which is provided by the child support unit certifying that the named licensee is not in compliance with a support order or with a written agreement for payment of support entered into by the child support unit and the licensee.

“*Child support unit*” means the child support recovery unit of the Iowa department of human services.

“*Denial notice*” means a board notification denying an application for the issuance or renewal of a license as required by Iowa Code chapter 252J.

“*Revocation or suspension notice*” means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by Iowa Code chapter 252J.

“*Withdrawal certificate*” means a document known as a withdrawal of a certificate of noncompliance provided by the child support unit certifying that the certificate is withdrawn and that the board may proceed with the issuance, reinstatement, or renewal of a license.

**655—17.2(252J) Denial of issuance or renewal of a license—nonpayment of child support.** The board shall deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures set forth in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

**17.2(1)** The notice required by Iowa Code section 252J.8 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

**17.2(2)** The effective date of the denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee or applicant.

**17.2(3)** The board’s executive director is authorized to prepare and serve the notice required by Iowa Code section 252J.8.

**17.2(4)** Licensees and applicants shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

**17.2(5)** All board fees for applications, license renewal, or license reinstatement must be paid by licensees or applicants, and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 252J.

**17.2(6)** In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

NURSING BOARD[655](cont'd)

**17.2(7)** The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the licensee or applicant when the license is issued or renewed following the board's receipt of a withdrawal certificate.

**655—17.3(252J) Suspension or revocation of a license—nonpayment of child support.** The board shall suspend or revoke a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures set forth in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

**17.3(1)** The notice required by Iowa Code section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

**17.3(2)** The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee.

**17.3(3)** The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 252J.8 and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event the license is on suspension, the executive officer shall notify the licensee of the board's intent to revoke the license.

**17.3(4)** Licensees shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

**17.3(5)** All board fees for license renewal or reinstatement must be paid by licensees, and all continuing education requirements must be satisfied before a license will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 252J.

**17.3(6)** In the event a licensee files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of revocation or suspension of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**17.3(7)** The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of the license, and shall similarly notify the licensee or applicant when the license is issued or renewed following the board's receipt of a withdrawal certificate.

DIVISION II  
NONPAYMENT OF STUDENT LOAN

**655—17.4(261) Definitions.** The following definitions shall apply to rules 17.5(261) and 17.6(261) of this chapter.

*"Certificate"* means a document known as a certificate of noncompliance which is provided by the college student aid commission certifying that the named licensee is not in compliance with the terms of an agreement for payment of a student loan obligation.

*"Commission"* means the college student aid commission.

*"Denial notice"* means a board notification denying an application for the issuance or renewal of a license as required by Iowa Code chapter 261.

*"Revocation or suspension notice"* means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by Iowa Code chapter 261.

## NURSING BOARD[655](cont'd)

“*Withdrawal certificate*” means a document known as a withdrawal of a certificate of noncompliance provided by the commission certifying that the certificate is withdrawn and that the board may proceed with the issuance, reinstatement, or renewal of a license.

**655—17.5(261) Denial of issuance or renewal of a license—nonpayment of student loan.** The board shall deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code chapter 261. In addition to the procedures set forth in chapter 261, this rule shall apply.

**17.5(1)** The notice required by Iowa Code section 261.126 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

**17.5(2)** The effective date of the denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the licensee or applicant.

**17.5(3)** The board’s executive director is authorized to prepare and serve the notice required by Iowa Code section 261.126.

**17.5(4)** Licensees and applicants shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

**17.5(5)** All board fees for applications, license renewal, or license reinstatement must be paid by licensees or applicants, and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 261.

**17.5(6)** In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**17.5(7)** The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the licensee or applicant when the license is issued or renewed following the board’s receipt of a withdrawal certificate.

**655—17.6(261) Suspension or revocation of a license—nonpayment of student loan.** The board shall suspend or revoke a license upon the receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code chapter 261. In addition to the procedures set forth in chapter 261, this rule shall apply.

**17.6(1)** The notice required by Iowa Code section 261.126 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

**17.6(2)** The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the licensee.

**17.6(3)** The board’s executive officer is authorized to prepare and serve the notice required by Iowa Code section 261.126 and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event the license is on suspension, the executive officer shall notify the licensee of the board’s intent to revoke the license.

## NURSING BOARD[655](cont'd)

**17.6(4)** Licensees shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

**17.6(5)** All board fees for license renewal or reinstatement must be paid by licensees, and all continuing education requirements must be satisfied before a license will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 261.

**17.6(6)** In the event a licensee files a timely district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of revocation or suspension of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**17.6(7)** The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of the license, and shall similarly notify the licensee or applicant when the license is issued or renewed following the board's receipt of a withdrawal certificate.

DIVISION III  
NONPAYMENT OF STATE DEBT

**655—17.7(272D) Definitions.** The following definitions shall apply to rules 17.8(272D) and 17.9(272D) of this chapter.

*“Centralized collection unit”* means the centralized collection unit of the department of revenue.

*“Certificate”* means a document known as a certificate of noncompliance which is provided by the centralized collection unit of the department of revenue certifying that the named licensee has an outstanding liability placed with the unit and has not entered into an approved payment plan to pay the liability.

*“Denial notice”* means a board notification denying an application for the issuance or renewal of a license as required by Iowa Code chapter 272D.

*“Revocation or suspension notice”* means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by Iowa Code chapter 272D.

*“Withdrawal certificate”* means a document known as a withdrawal of a certificate of noncompliance provided by the centralized collection unit certifying that the certificate is withdrawn and that the board may proceed with the issuance, reinstatement, or renewal of a license.

**655—17.8(272D) Denial of issuance or renewal of a license—nonpayment of state debt.** The board shall deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in Iowa Code chapter 272D. In addition to the procedures set forth in chapter 272D, this rule shall apply.

**17.8(1)** The notice required by Iowa Code section 272D.8 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

**17.8(2)** The effective date of the denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 272D.8, shall be 60 days following service of the notice upon the licensee or applicant.

**17.8(3)** The board's executive director is authorized to prepare and serve the notice required by Iowa Code section 272D.8.

**17.8(4)** Licensees and applicants shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the

## NURSING BOARD[655](cont'd)

board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

**17.8(5)** All board fees for applications, license renewal, or license reinstatement must be paid by licensees or applicants, and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 272D.

**17.8(6)** In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 272D.8 and 272D.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**17.8(7)** The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the licensee or applicant when the license is issued or renewed following the board's receipt of a withdrawal certificate.

**655—17.9(272D) Suspension or revocation of a license—nonpayment of state debt.** The board shall suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in Iowa Code chapter 272D. In addition to the procedures set forth in chapter 272D, this rule shall apply.

**17.9(1)** The notice required by Iowa Code section 272D.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

**17.9(2)** The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 272D.8, shall be 60 days following service of the notice upon the licensee.

**17.9(3)** The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 272D.8 and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event the license is on suspension, the executive officer shall notify the licensee of the board's intent to revoke the license.

**17.9(4)** Licensees shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

**17.9(5)** All board fees for license renewal or reinstatement must be paid by licensees, and all continuing education requirements must be satisfied before a license will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 272D.

**17.9(6)** In the event a licensee files a timely district court action following service of a board notice pursuant to Iowa Code sections 272D.8 and 272D.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of revocation or suspension of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**17.9(7)** The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of the license, and shall similarly notify the licensee or applicant when the license is issued or renewed following the board's receipt of a withdrawal certificate.

These rules are intended to implement Iowa Code chapters 252J, 261, and 272D.

NURSING BOARD[655](cont'd)

ITEM 2. Rescind and reserve **655—Chapter 18.**

[Filed 3/11/09, effective 5/13/09]

[Published 4/8/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.

**ARC 7670B****PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby adopts new Chapter 37, "Breast and Cervical Cancer Early Detection Program," Iowa Administrative Code.

The Iowa Breast and Cervical Cancer Early Detection Program (IA BCCEDP) is funded through a cooperative agreement with the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) under the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) established under Title XV of the Public Health Service Act. Iowa first received CDC funding in 1993 and began providing early detection services in 1995. The purpose of the IA BCCEDP is to provide, within available financial resources, breast and cervical cancer screening and diagnostic services to underserved women, to provide public and professional development, and to support community partnerships to enhance statewide cancer control activities.

These rules cover agencies designated by contracting county boards of health to provide community-based IA BCCEDP services and to receive funds from the Department for that purpose. The designated agencies facilitate the essential screening and diagnostic services consistent with CDC and IA BCCEDP guidelines.

Notice of Intended Action was published in the January 28, 2009, Iowa Administrative Bulletin as **ARC 7538B**. No comments were received on these rules. The adopted amendment is identical to the one published under Notice.

These rules were approved by the State Board of Health on March 11, 2009.

These rules will become effective on May 13, 2009.

These rules are intended to implement Iowa Code chapter 135.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 37] is being omitted. These rules are identical to those published under Notice as **ARC 7538B**, IAB 1/28/09.

[Filed 3/11/09, effective 5/13/09]

[Published 4/8/09]

[For replacement pages for IAC, see IAC Supplement 4/8/09.]

**ARC 7671B****PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272D.8, the Department of Public Health hereby adopts new Chapter 194, "Nonpayment of State Debt," Iowa Administrative Code.

These rules describe the action the Department needs to take upon receipt of a certificate of noncompliance from the centralized collection unit of the Department of Revenue. The rules specify the procedures for denial of issuance or renewal of a license or the suspension or revocation of a license issued by the Department.

Notice of Intended Action was published in the January 28, 2009, Iowa Administrative Bulletin as **ARC 7540B**. No comments were received on these rules. One technical change has been made since the

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Notice was published. The proposed definition of “Act” was not adopted because the 2009 Iowa Code is now published; references to the Act have been replaced with references to Iowa Code chapter 272D.

These rules were approved by the State Board of Health on March 11, 2009.

These rules will become effective on May 13, 2009.

These rules are intended to implement Iowa Code chapter 272D.

The following amendment is adopted.

Adopt the following **new** 641—Chapter 194:

CHAPTER 194  
NONPAYMENT OF STATE DEBT

**641—194.1(272D) Definitions.** For the purpose of this chapter, the following definitions shall apply.

“*Applicant*” means an individual who is seeking the issuance of a license.

“*Centralized collection unit*” means the centralized collection unit of the Iowa department of revenue.

“*Certificate of noncompliance*” means a document provided by the centralized collection unit of the department of revenue certifying that the named applicant or licensee has an outstanding liability placed with the unit and has not entered into an approved payment plan to pay the liability.

“*Denial notice*” means a licensing authority notification denying an application for the issuance or renewal of a license as required by Iowa Code chapter 272D.

“*Department*” means the department of public health.

“*License*” means a license, certification, registration, permit, approval, renewal, or other similar authorization issued to a person by a licensing authority which evidences the granting of authority to engage in a profession, occupation, or business.

“*Licensing authority*” means a board, commission, or any other entity of the department which has authority within this state to suspend or revoke a license or deny the renewal or issuance of a license authorizing a person to engage in a business, occupation, or profession.

“*Revocation or suspension notice*” means a licensing authority notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by Iowa Code chapter 272D.

“*Withdrawal certificate*” means a document provided by the centralized collection unit certifying that the certificate of noncompliance is withdrawn and that the licensing authority may proceed with issuance, reinstatement, or renewal of a license.

**641—194.2(272D) Issuance or renewal of a license—denial.** The licensing authority shall deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the centralized collection unit. This rule shall apply in addition to the procedures set forth in Iowa Code chapter 272D.

**194.2(1) Service of denial notice.** Notice shall be served upon the applicant or licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

**194.2(2) Effective date of denial.** The effective date of the denial of the issuance or renewal of a license, as specified in the denial notice, shall be 60 days following service of the denial notice upon the applicant or licensee.

**194.2(3) Preparation and service of denial notice.** The licensing authority is authorized to prepare and serve the denial notice upon the applicant or licensee.

**194.2(4) Licensees and applicants responsible to inform licensing authority.** Licensees and applicants shall keep the licensing authority informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D. Licensees and applicants shall also provide the licensing authority copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code chapter 272D, all court orders entered in such actions, and any withdrawals of certificates issued by the centralized collection unit.

**194.2(5) Reinstatement following license denial.** All licensing authority fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees before a

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

license will be issued, renewed, or reinstated after the licensing authority has denied the issuance or renewal of a license pursuant to Iowa Code chapter 272D.

**194.2(6) *Effect of filing in district court.*** In the event an applicant or a licensee files a timely district court action following service of a denial notice by a licensing authority, the licensing authority shall continue with the intended action described in the denial notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the licensing authority to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the licensing authority shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**194.2(7) *Final notification.*** The licensing authority shall notify the applicant or licensee in writing through regular first-class mail, or by such other means as the licensing authority determines appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the applicant or licensee if the license is issued or renewed following the licensing authority's receipt of a withdrawal certificate.

**641—194.3(272D) Suspension or revocation of a license.** The licensing authority shall suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit in accordance with the procedures set forth in Iowa Code chapter 272D. This rule shall apply in addition to the procedures set forth in Iowa Code chapter 272D.

**194.3(1) *Service of revocation or suspension notice.*** A revocation or suspension notice shall be served upon the licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

**194.3(2) *Effective date of revocation or suspension.*** The effective date of the suspension or revocation of a license, as specified in the revocation or suspension notice, shall be 60 days following service of the notice upon the licensee.

**194.3(3) *Preparation and service of revocation or suspension notice.*** The licensing authority is authorized to prepare and serve the revocation or suspension notice upon the licensee and is directed to notify the licensee that the license will be suspended, unless the license is already suspended on other grounds. In the event that the license is on suspension, the licensing authority shall notify the licensee of the licensing authority's intention to revoke the license.

**194.3(4) *Licensee responsible to inform licensing authority.*** The licensee shall keep the licensing authority informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D. Licensees shall also provide the licensing authority copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code chapter 272D, all court orders entered in such actions, and any withdrawal certificates issued by the centralized collection unit.

**194.3(5) *Reinstatement following license suspension or revocation.*** A licensee shall pay all licensing authority fees required for license renewal or license reinstatement before a license will be reinstated after the licensing authority has suspended or revoked a license pursuant to Iowa Code chapter 272D.

**194.3(6) *Effect of filing in district court.*** In the event a licensee files a timely district court action pursuant to Iowa Code chapter 272D, and following service of a revocation or suspension notice, the licensing authority shall continue with the intended action described in the revocation or suspension notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the licensing authority to proceed. For purposes of determining the effective date of the license suspension or revocation, the licensing authority shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**194.3(7) *Final notification.*** The licensing authority shall notify the licensee in writing through regular first-class mail, or by such other means as the licensing authority determines appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license, and shall similarly notify the licensee if the license is reinstated following the licensing authority's receipt of a withdrawal certificate.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

**641—194.4(272D) Sharing of information.** Notwithstanding any statutory confidentiality provision, the department or licensing authority may share information with the centralized collection unit of the department of revenue through automated means for the sole purpose of identifying applicants or licensees subject to enforcement pursuant to Iowa Code chapter 272D.

These rules are intended to implement Iowa Code chapter 272D.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.

**ARC 7666B**

## **REVENUE DEPARTMENT[701]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby adopts new Chapter 239, "Local Option Sales Tax Urban Renewal Projects," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXI; No. 16, p. 1730, on January 28, 2009, as **ARC 7531B**.

New Chapter 239 is adopted as a result of 2008 Iowa Acts, chapter 1191, sections 65 through 68, which authorizes an eligible city with a local option sales and services tax to establish, by ordinance, a sales tax increment financing district for the purpose of funding urban renewal projects.

These rules are identical to those published under Notice of Intended Action.

These rules will become effective May 13, 2009, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code chapter 423B as amended by 2008 Iowa Acts, chapter 1191, sections 65 to 68.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 239] is being omitted. These rules are identical to those published under Notice as **ARC 7531B**, IAB 1/28/09.

[Filed 3/9/09, effective 5/13/09]

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